
United States
Circuit Court of Appeals
For the Ninth Circuit.

WILLIAM W. CRAWFORD, Trustee,

Appellant,

vs.

WASHINGTON NORTHERN RAILROAD COMPANY, a Corporation; OREGON-WASHINGTON TIMBER COMPANY, a Corporation; BLAZIER TIMBER COMPANY, a Corporation; MISSISSIPPI VALLEY TRUST COMPANY, a Corporation, Trustee; UNION TRUST COMPANY, a Corporation, Trustee; FRANK P. HAYS and WILLIAM C. LITTLE, Co-partners Doing Business as LITTLE & HAYS; — HAYS; BRECKENRIDGE JONES, ELI KLOTZ, JAMES GROVER, JAMES E. BROECK, J. E. BLAZIER, E. J. BLAZIER, and JOHN A. PRESCOTT and D. L. ROBINSON, Co-partners Doing Business as JOHN A. PRESCOTT & COMPANY,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Southern Division.

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Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Solicitors for the Appellees. [1*]

*In the United States District Court for the Western
District of Washington, Southern Division.*

No. 9-E.

WILLIAM W. CRAWFORD, Trustee,
Appellant,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation; OREGON-WASH-
INGTON TIMBER COMPANY, a Corpora-

*Page number appearing at foot of page of original certified Record.

tion; BLAZIER TIMBER COMPANY, a Corporation; MISSISSIPPI VALLEY TRUST COMPANY, a Corporation, Trustee; UNION TRUST COMPANY, a Corporation, Trustee; FRANK P. HAYS and WILLIAM C. LITTLE, Copartners Doing Business as Little & Hays; ——— HAYS; BRECKENRIDGE JONES; ELI KLOTZ; JAMES GROVER; JAMES E. BROECK; J. E. BLAZIER; E. J. BLAZIER; and JOHN A. PRESCOTT and D. L. ROBINSON, Copartners Doing Business as JOHN A. PRESCOTT & COMPANY,

Appellees.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare and certify to constitute the record on appeal in the above case, a transcript of the following, omitting all captions, endorsements, verifications, acceptances of service, etc., excepting on the first paper; the record to be printed in San Francisco, California.

1. This praecipe;
2. Amended bill of complaint; answer to same;
3. Cross-complaint of Wm. W. Crawford;
4. Answer to same;
5. Reply to cross-complaint;
6. Motion of Crawford to strike from amended complaint;
7. Order thereon;
8. Motion to strike from answer of Crawford, and order of Court thereon;

9. Motion to strike from cross-complaint of Crawford and order of Court thereon.
10. Judge's decision;
11. Final decree.
12. Petition for appeal;
13. Order allowing appeal;
14. Bond on appeal;
15. Assignments of error. [2]
16. Stipulation as to original exhibits.
17. Transcript of the evidence;
18. Order settling transcript of evidence.

KERR & McCORD,
Solicitors for Appellant.

Filed Nov. 2, 1915. [3]

[Title of Court and Cause.]

Amended Bill of Complaint.

To the Honorable the Judge of the Above-entitled Court:

Your orators bring this their amended bill of complaint pursuant to leave heretofore granted by the Court, and for cause of suit against the defendants above named, aver:

I.

That your orator, Mississippi Valley Trust Company, is now and at all of the times hereinafter mentioned has been a corporation, organized and subsisting under the laws of the State of Missouri, and empowered by its charter to administer trusts and to perform all of the offices, duties and functions assumed by it as hereinafter averred. That your orator is now and at all of the times hereinafter men-

tioned has been a citizen and resident of the State of Missouri.

II.

That your orator, Union Trust Company, is now and at all of the times hereinafter mentioned has been a corporation, organized and subsisting under the laws of the State of Michigan, and empowered by its charter to administer trusts and to perform all of the offices, duties and functions assumed by [4] it as hereinafter averred. That your orator is now and at all of the times hereinafter mentioned has been a citizen and resident of the State of Michigan.

III.

That the defendant, Washington Northern Railroad Company, is now and at all of the times hereinafter mentioned has been a corporation, organized under the laws of the State of Oregon, and empowered by its charter to operate a railroad as a private carrier within the State of Washington. That the said defendant is now and at all of the times hereinafter mentioned has been a citizen and resident of the State of Oregon. That prior to the 4th day of June, 1910, the said defendant duly filed with the Secretary of State of Washington a certified copy of its Articles of Incorporation, named a state agent for the State of Washington, paid the license fees exacted by the statutes of Washington from foreign corporations, and has at all times since said date been qualified for the transaction of business within the State of Washington by continued compliance with the said laws.

IV.

That the defendant, Oregon-Washington Timber

Company, is now and at all of the times hereinafter mentioned has been a corporation, organized and subsisting under the laws of the State of Oregon, and empowered under its charter to own timber and timber lands and to manufacture timber products within the State of Washington. That prior to June 4th, 1910, the said defendant had filed with the Secretary of State of Washington a certified copy of its Articles of Incorporation, had appointed a state agent for the State of Washington, had paid the license fees exacted by the statutes of the State of Washington from foreign corporations, and has at all times since said date by compliance with the said statutes continued to be [5] authorized and empowered to transact business within the State of Washington. That the said defendant, Oregon-Washington Timber Company, is now and at all of the times hereinafter mentioned has been a citizen and resident of the State of Oregon.

V.

That the defendant, William W. Crawford, trustee, is now and at all of the times hereinafter mentioned has been a citizen and resident of the State of Illinois, residing in the city of Chicago, therein.

VI.

That the defendant, Blazier Timber Company, is now and at all of the times hereinafter mentioned has been a corporation, organized and subsisting under the laws of the State of Oregon, and a citizen and resident thereof.

VII.

That this is a suit between *ditizens* and residents

of different states in which the amount in controversy exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs; that it is also a suit for the foreclosure of certain liens on property situate within the Western District of Washington and within the Southern Division thereof, which property consists in part of real property, in part of personal property and in part of easements, servitudes and right of way on real property, all situate within the said district.

VIII.

That on the 4th day of June, 1910, pursuant to authority given by unanimous vote of all of its stockholders at a stockholders' meeting theretofore regularly held, and pursuant likewise to a resolution duly adopted by its board of directors at a meeting regularly held prior to the said date the Washington Northern Railroad Company made, executed and [6] delivered to your orator, the Mississippi Valley Trust Company, as trustee, a certain mortgage and deed of trust wherein and whereby the said Washington Northern Railroad Company conveyed to your orator, the Mississippi Valley Trust Company, the following described property, situate in the county of Skamania and within the Southern Division of the Western District of Washington, to wit:

That certain logging railroad extending from Prindle's Landing in Section Twelve (12), Township One (1) North, Range Five (5) East of the Willamette Meridian, and running thence through and over Sections Twelve (12), One (1), Two (2), Eleven (11), Three (3) and Two (2) in said Township One (1) North, Range

Five (5) East, and thence through and over Sections Thirty-five (35), Twenty-six (26) and Twenty-five (25) in Township Two (2) North, Range Five (5) East of said Meridian, and thence through and over Sections Thirty (30) and Nineteen (19) in Township Two (2) North, Range Six East of said Meridian, and thence through and over Sections Twenty-four (24) and Thirteen (13) in Township Two (2) North, Range Five (5) East of said Meridian, together with all spurs, switches, branches and extensions thereof, being the same railroad heretofore owned by the Cape Horn Railroad Company.

In and by the said mortgage there was also conveyed and transferred to the Mississippi Valley Trust Company, as trustee, in like manner all of the franchises, contracts, rights of way, easements, privileges, traffic agreements, rolling stock, cars and engines which were then owned by the Washington Northern Railroad Company, or which should be thereafter acquired by it, and also all rents, incomes, tolls and profits accruing or to accrue from the business of the Washington Northern Railroad Company, and particularly from the operation of the said property. There was also transferred and conveyed by the defendant, Washington Northern Railroad Company, to Mississippi Valley Trust Company, in and by the said mortgage, all future acquired property, whether the same was real, personal or mixed, and it was specifically provided in and by the said instrument of mortgage that the said future acquired property should be deemed to be a part of the security trans-

ferred by the said mortgage and [7] deed of trust, and as fully embraced within the provisions thereof and subject to the lien created thereby as if the said future acquired property had been owned by the Washington Northern Railroad Company on the 4th of June, 1910, and had been specifically described and mentioned in the said mortgage and deed of trust.

That at the date of the execution of the said mortgage and deed of trust the Washington Northern Railroad Company was engaged in the operation of the railroad property described above, and has continued in the operation thereof at all of the times up to and bringing of this suit when its operation was determined by the appointment of a receiver under the original bill of complaint filed in this cause.

That subsequent to the 4th day of June, 1910, the Washington Northern Railroad Company has acquired additional rights of way, additional railroad lines have been constructed and extensions of the said railroad have been made, and *brances* thereof have been built and put in operation, and are now owned by Washington Northern Railroad Company; that cars and equipment have likewise been acquired and the said railroad now extends northerly, northeasterly and northwesterly from the original northern terminus of said railroad as above described.

That said mortgage was regularly executed and acknowledged, and being entitled to record was duly recorded on the 10th of June, 1910, in the office of the county auditor of Skamania County, Washington, in book "I" at page 339 thereof of the Mortgage Records of Skamania County, Washington. The said

mortgage is hereby by reference incorporated in this amended bill, and your orators pray leave at any and all times to present the said mortgage or a true copy thereof for consideration by the Court in further elaboration of your orator's cause of suit thereunder. [8]

IX.

That the said mortgage described in paragraph VIII of this amended bill was executed by way of security for a bond issue in the aggregate sum of One Million Dollars (\$1,000,000) and as contemplated in and by the said mortgage there were duly issued one thousand negotiable bonds, each of the denomination of One Thousand Dollars (\$1,000) and numbered one to one thousand consecutively, which bonds were substantially in the following form except that the said bonds were numbered as aforesaid, and were duly signed by the president and secretary of the Washington Northern Railroad Company and by the vice-president of Mississippi Valley Trust Company, to wit:

\$1,000. No. ——. \$1,000.

UNITED STATES OF AMERICA.

State of Oregon.

WASHINGTON NORTHERN RAILROAD
COMPANY.

First Mortgage, Six Per Cent. Gold Bond.

The Washington Northern Railroad Company, a corporation under the laws of the State of Oregon, acknowledged itself to owe and hereby promises to pay to the bearer, or, if this bond be registered as hereinafter provided, then to the registered owner

hereof, for value received, One Thousand Dollars, at the office of the Mississippi Valley Trust Company, in the City of St. Louis, State of Missouri, on the first day of May, 1928, without grace, and also promises to pay interest thereon at the rate of six per centum per annum from May 1st, 1910, payable semi-annually on the first days of May and November in each year, said interest until the maturity of this bond being evidenced by and to be paid on presentation and surrender of the respective interest coupons hereto annexed, as they severally mature, at said office of the Mississippi Valley Trust Company; the principal and interest of this bond to be paid without grace in Gold Coin of the present standard of weight and fineness as fixed by the laws of the United States now in force, without deduction of any tax or taxes which the Railroad Company may be required to pay thereon, whether now imposed or hereafter to be imposed thereon, either by the laws of the United States, or by any state, county or municipality therein, this Company agreeing to pay the same.

This bond is one of a series of bonds for the aggregate amount of One Million Dollars (\$1,000,000), all of like tenor, amount, date and maturity, and numbered from 1 to 1,000 both inclusive, all executed and delivered in pursuance of the votes of the stockholders and Board of Directors respectively of said Washington Northern Railroad Company, authorizing the issue of said Bonds and the execution and delivery of the deed of trust hereinafter mentioned.

[9]

The payment of the principal and interest of all

said bonds is equally secured by first mortgage deed of trust of even date, executed and delivered by said Railroad Company conveying all and singular the property in said first mortgage deed of trust fully described, said first mortgage deed of trust being referred to and the terms thereof made part of this bond.

This bond shall pass by delivery, unless it has been registered as to payment of the principal, as provided in the form for registration on the back hereof.

No recourse shall be had for the payment of any part of the principal or interest of this bond against any incorporator, or any present or future stockholder, officer or directors of said Washington Northern Railroad Company, either directly or through said Company, by virtue of any statute or by the enforcement of any assessment or otherwise; any and all liability of said incorporations stockholders, directors and officers being by the acceptance hereof and as a part of the consideration for the issuance hereof, expressly released.

This bond may be called and redeemed by the Railroad Company, or by the Trustee, on November 1, 1910, or on any interest payment date thereafter on payment of the principal hereof and accrued interest to the date fixed for payment, together with a premium of three (3) per cent on said principal upon sixty days' notice, given as provided by the terms of said mortgage deed of trust. In making such calls for redemption these bonds which have the lowest numbers, beginning with number one,

shall be called first, in the order of their numbers.

This bond shall not be valid for any purpose until it shall have been authenticated by the certificate endorsed herein, duly signed by said Mississippi Valley Trust Company, as trustee.

IN WITNESS WHEREOF, said Washington Northern Railroad Company has caused its corporate name to be signed hereto by its President or a Vice-president, and its corporate seal to be hereto affixed, attested by its Secretary or Assistant Secretary and has caused the coupons hereto attached to be executed with the facsimile signature of its present Treasurer, all as of the 4th day of June, A. D. 1910.

WASHINGTON NORTHERN RAILROAD
COMPANY,

By _____,
President.

Attest: _____,
Secretary.

TRUSTEE'S CERTIFICATE.

This certifies that the within bond is one of the series of bonds described in the within mentioned first mortgage deed of trust.

MISSISSIPPE VALLEY TRUST COM-
PANY, Trustee.

By _____,
Vice-president.

That attached to each of the said bonds was a coupon which entitled the bearer to the payment of Thirty Dollars (\$30.00) and interest on the 1st day of May and on the 1st [10] day of November of

each year subsequent to the date of the said mortgage, it being agreed in and by the terms of the said mortgage that the said debt secured thereby should bear six per cent (6%) interest payable semi-annually on the 1st day of May and the 1st day of November of each year, the principal of the said debt, however, being payable on the 1st day of May, 1928, subject to provisions hereinafter referred to with reference to a prior maturity of the same.

X.

That in and by the terms of the said mortgage the Washington Northern Railroad Company covenanted and agreed to pay the bonds so issued thereunder and the interest installments thereon as the same matured from time to time, and also covenanted and agreed to pay all taxes and assessments of all kinds and descriptions which might be assessed, levied or charged against any part of the said security, and the Washington Northern Railroad Company also covenanted and agreed to pay any mechanic's or other liens on any of the said property which might have priority over the said mortgage, and warranted that the said mortgage during the life of the said loan should at all times remain a first lien against all of the said property. It is further provided in and by the terms of the said mortgage and deed of trust that in case the trustee, pursuant to an option therein contained, should advance or expend any money for premiums for insurance on any of the property covered thereby, or for any taxes or assessments or for the redemption of the said property from any tax sales or for the payment of any liens which might take precedence over

the lien of the said mortgage that all advances so made by the trustee, together with a reasonable sum for its services in protecting the said property in the said respects, should be paid by the Washington Northern Railroad Company to be, and should be deemed to be a part of the [11] debt secured by the said mortgage and deed of trust. It was further provided therein that the Washington Northern Railroad Company would pay any taxes or public dues levied by any lawful authority on the said mortgage debt, or the interest thereon, to the end that the holders of the said bonds might receive the amounts stipulated therein without deduction for or on account of any taxes or public dues levied thereon or required to be retained therefrom. It was further provided in the said mortgage that if default should be made by the Washington Northern Railroad Company in the payment of any sum of money called for by the said bonds, or any thereof, whether the same was principal or interest, or in the performance of any other covenant assumed by the Washington Northern Railroad Company in and by said mortgage, and in case said default should continue for thirty days after written notice given by the trustee to the Washington Northern Railroad Company, or by the holder of any bonds secured thereby, which notice by a bondholder might be left with the said trustee, Mississippi Valley Trust Company, then and in either of said cases the said Mississippi Valley Trust Company might at its option declare the entire principal of the said bonds then outstanding at once due and

payable, together with all the accrued and unpaid interest thereon, and the said debt, both principal and interest, should at once become payable by Washington Northern Railroad Company, and thereupon the Mississippi Valley Trust Company should be empowered to proceed in any court having jurisdiction for the foreclosure of the said mortgage and the sale of the said property under foreclosure decree. That it was further provided therein that out of the proceeds of any foreclosure sale there should be paid all of the costs incurred by the Mississippi Valley Trust Company in the foreclosure suit, a reasonable solicitor's fee therein, and all of the expenses and charges of the trust devolving [12] upon the Mississippi Valley Trust Company under the said mortgage and deed of trust, and also a reasonable compensation to the trustee for its services in the performance thereof and in the conduct of the foreclosure suit, and it was further provided therein that the trustee should be reimbursed for any and all moneys advanced by it in the performance of its trust, or in the care of properties pledged to it under the said mortgage and deed of trust. That it was further provided therein that upon any foreclosure sale being made by the mortgaged premises the principal of all bonds secured thereby and then outstanding should at once become due and payable, anything in the said bonds or the said mortgage to the contrary notwithstanding. That it was further provided in and by the said mortgage that pending the foreclosure of the same the Mississippi Valley Trust Company, as trustee

aforesaid, might at its option take possession of the said properties and operate the same or might apply to the Court for the appointment of a receiver, and the Washington Northern Railroad Company in and by the said mortgage and deed of trust consented to the appointment of such receiver and to his custody of the property hereinbefore described and covered by the said mortgage, and to the application on the expenses of trustee, and the debt secured by the said mortgage and deed of trust of any moneys and the proceeds of any assets in the possession of the receiver; and it was further provided in and by the said mortgage and deed of trust that it should be competent for such receiver to operate the railway property hereinbefore specified and to carry on any of the operations of the Washington Northern Railroad Company, and the Washington Northern Railroad Company in and by the said mortgage and deed of trust consented thereto.

XI.

That the interest called for by the bonds hereinbefore described up to and including the 1st day of May, 1912, [13] has been paid, but default was made by the Washington Northern Railroad Company in an installment of interest thereon maturing on the 1st day of November, 1912, and similar default was made in the payment of installment of interest maturing on the 1st day of May, 1913, and since the pendency of this suit, and on the 1st day of November, 1913, a further default has been made in the payment of interest on the said bonds. That the said interest has been demanded by the Missis-

Mississippi Valley Trust Company and by the bondholders entitled thereto, but the Washington Northern Railroad Company has failed and neglected to pay the same and the whole thereof.

That the Washington Northern Railroad Company has likewise neglected to pay large amounts of money due and regularly assessed and levied against the properties above described, as taxes for the *year* 1912 and 1913; that unless the said taxes be paid levies will be made on the said mortgaged property and the same will be sold for the satisfaction of the same. That by reason of the defaults aforesaid your orator, the Mississippi Valley Trust Company, has elected to declare the entire debt due and owing, and on or about the 3d day of September, 1913, your orator served notice on Washington Northern Railroad Company in writing, and pursuant to the provisions of the mortgage hereinbefore referred to, of its demand for the payment of the interest delinquent as aforesaid, and of its election to declare the entire debt due and owing unless the moneys due and unpaid were paid within thirty days from the date of such notice. That the said thirty days has long since expired and no part of the said money has been paid.

XII.

That it was furthermore provided in and by the said mortgage and deed of trust that the security might be sold [14] either as an entirety or in parcels; that the said property cannot be sold to advantage except as an entirety; that it would be impracticable to operate the same except under one

ownership, and that an attempt to sell the said properties piecemeal or in parcels would result in the sacrifice thereof; and that it is necessary for the conservation of the said property and the protection of the liens thereon that the said property be sold as an entirety.

XIII.

That the Washington Northern Railroad Company had defaulted in the payment of divers and sundry of its obligations prior to the bringing of this suit; that it was threatened with attachments and levies upon its property, and that it was then and is now unable to operate its property and to carry out its contracts, or to conserve its property and protect the same for the benefit of its lien holders. That the said defendant was at the institution of this suit and still is wholly unable to pay the taxes and lawful assessments levied and to be levied on its property. That it was necessary at the institution of this suit and is still necessary that a receiver take possession of the said properties and hold the same during the pendency of this suit to the end that the same shall be conserved and protected from seizure under divers and sundry claims and liens, and to the end that the said property may be disposed of in accordance with law and with the contract rights of the parties to this suit.

XIV.

That on the 4th day of June, 1910, pursuant to authority given by a unanimous vote of its stockholders at a meeting of the stockholders duly called for such purpose, and pursuant to a resolution duly

passed at a regularly called [15] meeting of the board of directors, Oregon-Washington Timber Company made, executed and delivered to your orator, Mississippi Valley Trust Company, its certain mortgage and deed of trust, wherein and whereby it conveyed to the Mississippi Valley Trust Company, as trustee, in fee simple *title all* of the following described property and timber situate thereon, all situate in the County of Skamania and State of Washington, to wit:

The East Half (E.1/2) of the Northeast Quarter (NE.1/4) of Section Twenty-five (25); the North Half (N.1/2) of the North Half (N.1/2) of Section Twenty-four (24); the East Half (E.1/2) of the Northeast Quarter (NE.1/4) and the North Half (N.1/2) of the Southeast Quarter (SE.1/4) of Section Twenty-three (23); the East Half (E.1/2) and the East Half (E.1/2) of the West Half (W.1/2) and the Southwest Quarter (SW.1/4) of the Northwest Quarter (NW.1/4), and the Northwest Quarter (NW.1/4) of the Southwest Quarter (SW.1/4) of Section Fourteen (14); the whole of Section Thirteen (13); the East Half (E.1/2) of Section Eleven; the Southeast Quarter (SE.1/4), and the Southwest Quarter (SW.1/4) of the Northeast Quarter (NE.1/4), and the Northeast Quarter (NE.1/4) of the Northwest Quarter (NW.1/4), and the West Half (W.1/2) of the Northwest Quarter (NW.1/4), and the Northwest Quarter (NW.1/4) of the Southwest Quarter (SW.1/4) and the South Half (S.1/2) of the Southwest

Quarter (SW. $\frac{1}{4}$) of Section Twelve (12); the Southeast Quarter (SE. $\frac{1}{4}$) of Section Two (2); the whole of Section One (1); all in Township Two (2) North, Range Five (5) East, Willamette Meridian.

The Northwest Quarter (NW. $\frac{1}{4}$) of Section Thirty (30); the Southwest Quarter (SW. $\frac{1}{4}$), and the North Half (N. $\frac{1}{2}$) of the North Half (N. $\frac{1}{2}$) of Section Nineteen (19); the whole of Section Eighteen (18); the Southeast Quarter (SE. $\frac{1}{4}$) of the Southeast Quarter (SE. $\frac{1}{4}$), and the Southwest Quarter (SW. $\frac{1}{4}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Seven (7); the Northwest Quarter (NW. $\frac{1}{4}$) of Section Eight (8); the Southwest Quarter (SW. $\frac{1}{4}$) of the Southeast Quarter (SE. $\frac{1}{4}$), and the Southwest Quarter (SW. $\frac{1}{4}$), and the Southeast Quarter (SE. $\frac{1}{4}$) of the Northwest Quarter (NW. $\frac{1}{4}$) and the West Half (W. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Six (6); all in Township Two (2) North, Range Six (6) East, Willamette Meridian.

The North Half (N. $\frac{1}{2}$) of the Northeast Quarter (NE. $\frac{1}{4}$), the South Half (S. $\frac{1}{2}$) of the Southeast Quarter (SE. $\frac{1}{4}$) of Section Thirty-four (34); the whole of Section Thirty-five (35); the South Half (S. $\frac{1}{2}$), and the Northeast Quarter (NE. $\frac{1}{4}$) of Section Thirty-six (36); the South Half (S. $\frac{1}{2}$) of Section Twenty-five (25); the Southwest Quarter (SW. $\frac{1}{4}$) and the Southwest Quarter (SW. $\frac{1}{4}$) of the Southeast Quarter (SE. $\frac{1}{4}$), and the Southwest Quarter (SW. $\frac{1}{4}$)

of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-six (26), the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-four (24); the Southwest Quarter (SW. $\frac{1}{4}$) of the Southeast Quarter (SE. $\frac{1}{4}$) of Section Thirteen (13); all in Township Three (3) North, Range Five (5) East Willamette Meridian. [16]

The whole of Section Thirty-one (31); the whole of Section Thirty-two (32); the whole of Section Twenty-eight (28); the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-nine (29); the Southwest Quarter (SW. $\frac{1}{4}$) of Section Thirty (30); the Southwest Quarter (SW. $\frac{1}{4}$) of Section Twenty (20); the Southeast Quarter (SE. $\frac{1}{4}$) and the West Half (W. $\frac{1}{2}$) of Section Nineteen (19); the whole of Section Eighteen (18); the Southwest Quarter (SW. $\frac{1}{4}$) of Section Seventeen (17); the Southwest Quarter (SW. $\frac{1}{4}$) of Section Eight (8); all in Township Three (3) North, Range Six (6) East, Willamette Meridian.

Containing in all about ten thousand eight hundred (10,800) acres, with timber situate thereon aggregating approximately four hundred million (400,000,000) feet.

In and by the said mortgage and deed of trust the defendant, Oregon-Washington Timber Company, likewise assigned and transferred to your orator, Mississippi Valley Trust Company, all real property, lands, timber and timber rights, and rolling stock of every kind and description then owned by Oregon-Washington Timber Company, or thereafter

to be acquired by it wheresoever the same was or might be situate, and also all tenements, hereditaments, buildings, structures, warehouses, workshops, mills, plants and fixtures, and all machinery, engines and boilers, and all documents, deeds, timber contracts and leases, maps, surveys, inventories and papers relating to the real estate and timber rights and contracts conveyed and pledged therein, whether the same were then owned by Oregon-Washington Timber Company or might be thereafter acquired; and also all rents, issues and profits, earnings, and income from the said property so specified, including likewise all property of the above kinds and descriptions which the said Oregon-Washington Timber Company owned on the 4th day of June, 1910, and all property of the said kind, nature and description which it might thereafter acquire in any manner and wheresoever the same might be situate. That the said mortgage was duly executed and acknowledged, was duly delivered to the Mississippi Valley Trust Company, and was duly recorded in the office of the county auditor of Skamania County, Washington, in book "I" at page 296 thereof of the Records of Mortgages [17] for Skamania County, Washington, on or about the 10th day of June, 1910. That the said mortgage thereupon became and has at all times since remained a first lien and encumbrance on the said property and the whole thereof.

XV.

That the said mortgage given by Oregon-Washington Timber Company to Mississippi Valley Trust

Company was given for the security of bonds in the aggregate sum of Six Hundred Thousand Dollars (\$600,000), being six hundred bonds in number each for the sum of One Thousand Dollars (\$1,000) which were negotiable and under which the amounts secured thereby were payable to bearer. That the said bonds by their terms bore interest at the rate of six per cent (6%) per annum, and the interest thereon was payable at intervals of six months on the 1st day of May and the 1st day of November in each year. That by the terms of said bonds the debt evidenced thereby, both principal and interest, was payable without deduction of any tax levied thereon by the United States or by any governmental authority. That by the terms of the said bonds Thirty Thousand Dollars (\$30,000) of the said debt, evidenced by bonds one to thirty, became due and payable on the 1st of May, 1912, and that a like sum became due at intervals of six months thereafter, each installment of the said debt so maturing being evidenced by thirty bonds numbered consecutively, each for the sum of One Thousand Dollars (\$1,000). That each of the said bonds had attached to it coupons evidencing the interest payments which were to be made on the 1st day of May and the 1st day of November of each year prior to the maturity of the said bonds and which were negotiable in form and payable to bearer. [18]

XVI.

That upon the execution of the mortgage given by Washington Northern Railroad Company to your orator, the Mississippi Valley Trust Company,

hereinbefore described, the defendant, Oregon-Washington Timber Company, purchased from Washington Northern Railroad Company for a valuable consideration, and became the owner of the entire issue of bonds secured by the said mortgage given by Washington Northern Railroad Company to your orator, the Mississippi Valley Trust Company, and thereupon bonds of the said issue to the amount of Six Hundred Thousand Dollars (\$600,000) and numbered respectively one (1) to six hundred (600) inclusive, were sold, assigned and transferred to your orator, Mississippi Valley Trust Company in and by the mortgage described *in and by the mortgage described* in paragraph XIV of this your orator's amended bill, and as a part of the security for the debt described and set forth in paragraph XV of this your orator's amended bill, and that it was provided in the said mortgage given by Oregon-Washington Timber Company to your orator, Mississippi Valley Trust Company that when the bonds secured thereby should be paid and canceled by the trustee a like amount par value of the bonds of Washington Northern Railroad Company so conveyed and transferred as a part of the said security should be also canceled by the trustee and returned to the Washington Northern Railroad Company, or delivered to the said Washington Northern Railroad Company uncanceled at its option.

XVII.

That by the terms of the said mortgage so given by the defendant, Oregon-Washington Timber Com-

pany, to your orator, Mississippi Valley Trust Company, it was further provided that the said mortgagor, the Oregon-Washington Timber Company would annually pay into the hands of the trustee a sum of money not less than Forty-five Thousand Dollars (\$45,000) [19] to be derived from the logging of timber situate on the property described in the said mortgage, the first year for which such payment was to be made being the year intervening between May 1st, 1911, and May 1st, 1912. That the total amount which should have been paid under the terms of the said provisions of the said mortgage, and which should have created a sinking fund for the retirement of the said bonds of the Oregon-Washington Timber Company, is the sum of Ninety Thousand Dollars (\$90,000).

XVIII.

That it was further provided in and by the said mortgage given by the defendant, Oregon-Washington Timber Company, to Mississippi Valley Trust Company, that Mississippi Valley Trust Company, the trustee named therein, might appoint a co-trustee by designating such appointment in writing and filing the same with the Secretary of Oregon-Washington Timber Company, and that when such appointment should be so made the trustee so named should be vested jointly with the Mississippi Valley Trust Company with all title to the said assets and with all powers, duties and franchises described in the said mortgage or deed of trust executed on the 4th day of June, 1910, by Oregon-Washington Timber Company to Mississippi Valley Trust Company.

That thereafter, and on or about the 19th day of May, 1911, by an appropriate instrument in writing, your orator, Mississippi Valley Trust Company, did designate your orator Union Trust Company, a co-trustee under the said mortgage and deed of trust as given by Oregon-Washington Timber Company. That the said instrument was duly filed with the Secretary of Oregon-Washington Timber Company, and duly placed on record in the Records of Deeds of Skamania County, Washington, in book "N" at page 178 thereof, on the 31st day of May, 1911. That at all of the times subsequent to the said 19th day of May, 1911, the [20] powers, duties, titles and franchises created by the said mortgage of June 4th, 1910, given by Oregon-Washington Timber Company, have been held and exercised jointly by your orators, Mississippi Valley Trust Company, of St. Louis, Missouri, and Union Trust Company of Detroit, Michigan.

XIX.

That it was provided in and by the terms of the said mortgage given by Oregon-Washington Timber Company on the 4th of June, 1910, that the mortgagor therein would pay all taxes and lawful assessments which might be assessed or levied against any of the property covered by the said mortgage, and that a failure to pay the same should be deemed to be a default under the terms of the said instrument.

XX.

That the defendant, Oregon-Washington Timber Company, has defaulted in the payment of taxes on the properties covered by the said mortgage of June

4th, 1910, for the years 1911, 1912 and 1913; that no part of the said taxes have been paid; that unless the same shall be paid the properties will be advertised and sold for the payment of the same, and the said properties will be lost not only to the defendant, Oregon-Washington Timber Company but to the other parties to this suit and to the bond holders who have purchased and now hold the bonds of the Oregon-Washington Timber Company secured by the said mortgage. That default was made likewise by the said defendant, Oregon-Washington Timber Company in the sinking fund provisions of the said mortgage, and the said defendant has wholly failed *the* neglected to pay to your orators, for the creation of a sinking fund, the sum of Forty-five Thousand Dollars (\$45,000) agreed to be paid for the year ending May st, 1912, and has wholly failed to pay the sum of [21] Forty-five Thousand Dollars (\$45,000) agreed to be paid for the year ending May 1st, 1913. That the interest due on the principal of the said debt on the 1st of November, 1912, remains at this time wholly unpaid, as does the interest due on the 1st of May, 1913, and the 1st of November, 1913. That it was provided in and by the terms of the said mortgage and deed of trust so given by Oregon-Washington Timber Company that in case a default should be made in any of the respects hereinbefore indicated, and in case a demand should be made upon the said defendant, Oregon-Washington Timber Company, by the trustee or trustees under the said mortgage, for the payment of the said sum of money, that at the expiration of sixty days from the making

of said demand the entire sum secured by the said mortgage should at once become due and payable, and that your orators should be vested with the right to proceed in equity for the foreclosure of the said mortgage, and the enforcement of the security so given for the said bonds. That on the 2d day of September, 1913, demand was duly made in writing on the defendant, Oregon-Washington Timber Company, for the payment of the several sums of money as to which it had defaulted prior to the said date, but no payment has been made pursuant thereto and the sixty days prescribed in and by the said mortgage have long since expired. That your orators have elected to declare the entire debt due and owing and to enforce their security thereon.

XXI.

That the entire bond issue secured by the said mortgage so executed by Oregon-Washington Timber Company, amounting to Six Hundred Thousand Dollars (\$600,000), has been negotiated and sold and is now outstanding except that Thirty Thousand Dollars, (\$30,000) of bonds, maturing on the 1st day of [22] May, 1912, and being respectively bonds numbered one (1), for the sum of One Thousand Dollars (\$1,000) have been paid, canceled and discharged. That thereupon there were delivered by your orators to the defendant, Washington Northern Railroad Company, bonds in the sum of Thirty Thousand Dollars (\$30,000) which bonds the said Washington Northern Railroad Company elected to have delivered to it uncanceled. That there is now outstanding, secured by the lien of the said mortgage given

by Oregon-Washington Timber Company, bonds to the amount of Five Hundred and Seventy Thousand Dollars (\$570,000) together with interest thereon, at the rate of six per cent (6%) per annum from May 1st, 1912.

XXII.

That it was provided in and by the terms of the said mortgage and deed of trust given by Oregon-Washington Timber Company that in the event of default as aforesaid it should be competent for your orators to take possession of the said property, either as trustees under the terms of the said instrument or through a receiver to be appointed by a court of competent jurisdiction, to the end that the said properties might be conserved and protected from loss and damage and depreciation at the hands of the creditors of Oregon-Washington Timber Company. That at the time of bringing this suit Oregon-Washington Timber Company was insolvent and wholly unable to pay its debts, and wholly unable to pay the taxes assessed and levied and to be in the future assessed and levied against the said properties. That it was necessary then and is necessary now for the protection of the said properties, and of the security so pledged therein, that a receiver be appointed, and that the said property pending this foreclosure be in the custody of this court through a receiver thereof. [23]

XXIII.

That it was further provided in and by the said mortgage that the trustee should be reimbursed for all proper outlays made by it in the handling of its

trust, and in the performance of its duties, and that in the event of a foreclosure of the said mortgage there should be chargeable against the mortgagor a reasonable attorney's fee and a reasonable compensation to the trustee for the conduct of the foreclosure suit, and for all services performed by the trustee or trustees and their attorneys therein, and that all of the costs and expenses of the said suit should be likewise chargeable against the security so pledged by its mortgage and deed of trust hereinbefore described.

XXIV.

Your orators aver that the defendant, Oregon-Washington Timber Company, the defendant Washington Northern Railroad Company and the defendant Blazier Timber Company are controlled and dominated by the same set of officers; that the stock in each of the said corporations is held by practically the same stockholders, and each of the said corporations is controlled by J. E. Blazier and E. J. Blazier, and that while three separate corporate organizations are maintained for the said companies there is in reality an intimate business association between the said corporations, and particularly between Oregon-Washington Timber Company and Washington Northern Railroad Company. That the business of Oregon-Washington Timber Company is wholly dependent upon the operation of the railroad of Washington Northern Railroad Company, and the operations of the railroad of Washington Northern Railroad Company are almost wholly dependent upon the marketing of timber on the lands of

Oregon-Washington Timber Company. That the revenues of the [24] said Washington Northern Railroad Company are derived from the carriage of timber products for Oregon-Washington Timber Company chiefly if not exclusively. That said Oregon-Washington Timber Company is a private carrier and not a common carrier. That the timber lands of Oregon-Washington Timber Company herebefore described contain a large quantity of timber, but the said timber is not green timber, but has been burned over and will deteriorate in value if not marketed within a reasonable time. That the said timber lands and the timber situate thereon are depreciating in value from time to time by reason of the said fire which has burned thereover.

XXV.

That subsequent to the making of the mortgage by Washington Northern Railroad Company on the 4th of June, 1910, the said Washington Northern Railroad Company entered into a contract with Weist Logging Company for the purchase from Weist Logging Company of a certain logging outfit with property appurtenant thereto, which is fully described in a certain instrument of record in book 2 at page 155 thereof of the Records of Agreements of the County of Skamania, and State of Washington, and in the office of the county auditor thereof. That it was agreed between Washington Northern Railroad Company and Weist Logging Company that Eighty Thousand Dollars (\$80,000) should be paid for the said logging equipment, and that the title thereto should remain with Weist Logging Company until

the whole of the said sum had been paid. That Thirty Thousand Dollars (\$30,000) was paid thereon by Washington Northern Railroad Company, and thereupon the rights of Washington Northern Railroad Company under the said contract of sale were assigned and transferred to the defendant, Blazier Timber Company, and the defendant, Blazier Timber Company, now claims some rights therein, but the assignment so taken by Blazier Timber Company was taken [25] with full notice of the mortgage given by Washington Northern Railroad Company, and of the provisions therein pledging as part of the security all after acquired property of Washington Northern Railroad Company, whether the same was real, personal or mixed.

XXVI.

That your orators by reference hereby incorporate in this their Bill the mortgage given by Oregon-Washington Timber Company to Mississippi Valley Trust Company on the 4th day of June, 1910, and crave leave to produce same, or a true copy thereof, as evidence of the rights of your orators thereunder.

XXVII.

That on or about the 1st day of March, 1912, the defendants, Washington Northern Railroad Company, Oregon-Washington Timber Company and Blazier Timber Company, made, executed and delivered to the defendant, William W. Crawford, trustee, a certain mortgage and deed of trust covering substantially all of the property hereinbefore described, and covering certain other property owned by the Blazier Timber Company as well. That the

said mortgage was by its terms a second mortgage on the said security hereinbefore described, and recited the execution of the mortgages held by your orators, and was and is subject and subordinate to the rights created by the mortgages so executed on the 4th day of June, 1910, by Washington Northern Railroad Company and by Oregon-Washington Timber Company. That under said mortgage the said defendant, William W. Crawford, claims some right in or lien upon the said property.

XXVIII.

That on the 4th of June, 1910, the defendant, Oregon-Washington Timber Company, executed a second mortgage on the properties described in paragraph XIV of this amended bill for [26] the security of Four Hundred Thousand Dollars (\$400,000) of second mortgage bonds. That the said bond issue in its entirety was sold, assigned and transferred by the defendant, Oregon-Washington Timber Company, to the defendant, Washington Northern Railroad Company, and as collateral security for the said bond issue of the Oregon-Washington Timber Company the said Oregon-Washington Timber Company assigned, transferred and set over also to Washington Northern Railroad Company Four Hundred Thousand Dollars (\$400,000) in amount of the bonds of Washington Northern Railroad Company, secured by the mortgage described in paragraph VIII of this amended bill, being bonds six hundred and one (601) to one thousand (1,000). That your orator, Mississippi Valley Trust Company, was and is trustee under the terms of the said second mortgage

so created, and the said bonds of Washington Northern Railroad Company were lodged with your orator, Mississippi Valley Trust Company, and are still held by it, pursuant to the transfer so made. That it is provided in and by the said second mortgage so executed by Oregon-Washington Timber Company that as and when the bonds secured thereby should be paid bonds of the Washington Northern Railroad Company in equivalent amount should be surrendered to Washington Northern Railroad Company, either canceled or uncanceled as Washington Northern Railroad Company might elect. That in and by the mortgage given to the defendant, William W. Crawford, trustee, the Washington Northern Railroad Company sold and assigned the said Four Hundred Thousand Dollars (\$400,000) of second mortgage bonds of the Oregon-Washington Timber Company and the said One Million Dollars (\$1,000,000) of first mortgage bonds of Washington Northern Railroad Company secured by the mortgage described in paragraph VIII of this amended bill, as the said first mortgage bonds of the said Washington Northern Railroad Company should be from time to [27] *released* and delivered, or releasable and deliverable by your orator, Mississippi Valley Trust Company, under the terms and provisions of the said first and second mortgage deeds of trust respectively of the Oregon-Washington Timber Company. That it was provided in and by the agreement between Washington Northern Railroad Company and Oregon-Washington Timber Company that the second mortgage bonds of Oregon-Washington

Timber Company with the collateral therefor, to wit, bonds six hundred and one (601) to one thousand (1,000) of the first mortgage bond issue of Washington Northern Railroad Company, should be sold and the proceeds thereof should be applied to the construction of additional railway lines for the Washington Northern Railroad Company into timber owned by Oregon-Washington Timber Company, and for the making of betterments and the purchase of equipment for said railroad. That your orators are advised that the said bond issue was not used for these purposes, but that the said bonds were undertaken to be pledged by the defendants, Oregon-Washington Timber Company and Washington Northern Railroad Company to the defendant, William W. Crawford, trustee, as hereinbefore set forth. Your orators are also advised and charge the fact to be that the said William W. Crawford, trustee, acquired all of his rights in and to the said bonds and in and to the security hereinbefore specified with full notice of all of the facts set forth in this your orators' bill. Your orators are further advised that a dispute exists between the holders of the first mortgage bonds of the Oregon-Washington Timber Company and of the Five Hundred and Seventy Thousand Dollars (\$570,000) of bonds of the Washington Northern Railroad Company on the one hand, and the said William W. Crawford, trustee, on the other hand, as to whether the railroad bonds numbered from six hundred and one (601) to one thousand (1,000) inclusive are entitled to participate with the said Five Hundred [28] and Seventy Thousand Dollars

(\$570,000) of Washington Northern Railroad bonds in the sale of the said property, and your orators are also advised that the bonds of the Washington Northern Railroad Company surrendered to it on the 1st of May, 1912, being Thirty Thousand Dollars (\$30,000) in amount, are also claimed by the defendant, William W. Crawford, and that he claims the right to enforce the same as of equal dignity with the bonds in the sum of Five Hundred and Seventy Thousand Dollars (\$570,000) so held as part of the security for the first mortgage given by Oregon-Washington Timber Company. That it is necessary for the protection of your orators in the disbursement of the funds arising from any sales which may be made of the properties described in this your orators' amended bill, that your orators shall be fully advised of the rights of the respective parties in and to such funds, and it is necessary for the protection of your orators that this Court by its decree shall determine whether the said bonds of the Washington Northern Railroad Company so claimed by the said William W. Crawford are of equal dignity with the Five Hundred and Seventy Thousand Dollars (\$570,000) of bonds aforesaid, or whether the said Four Hundred and Thirty Thousand Dollars (\$430,000) of bonds so claimed by William W. Crawford, trustee, are to be deemed to be satisfied or postponed to the Five Hundred and Seventy Thousand Dollars (\$570,000) of bonds so held as a part of the security for the first mortgage given by Oregon-Washington Timber Company.

XXIX.

That it was provided in the mortgage given by

Washington Northern Railroad Company, and specified in paragraph VIII of this amended bill, and in the mortgage given by Oregon-Washington Timber Company, and described in paragraph XIV of this amended bill, that at any foreclosure sale of the properties [29] covered by the said mortgages bond holders secured thereby might bid at the said sale and pay their bids in part by the indorsement on their bonds of such credits as the said bonds should be entitled to from the purchase price of the properties sold at such sale or sales.

XXX.

That your orators have no plain, speedy or adequate remedy at law. That all of the facts and circumstances herein set forth are true and entitle your orators to consideration and relief at the hands of a court of equity.

WHEREFORE, your orators bring this their bill and pray that pending this foreclosure the said properties may be held by a receiver of this court, and protected from depreciation and sale for the payment of taxes, and protected likewise from seizure by the general creditors of the several defendants to this suit, and that the properties pledged by Washington Northern Railroad Company as security for its mortgage hereinbefore described may be sold in the manner prescribed by law, and that the properties covered by the mortgage of Oregon-Washington Timber Company in and by its first mortgage described in paragraph XIV of this amended bill may be likewise sold. That the rights of all of the parties to this suit may be determined by the decree, and

that the funds arising from the sale *sale* may be distributed in accordance with the rights and equities of the respective parties, and that such hearings may be had as shall suffice to advise the Court thoroughly with reference to the rights of the respective parties, and of the respective bond holders secured by the said mortgages.

Your orators further pray that in and by the said decree it may be provided that any bond holders secured by [30] the said mortgages may bid at the said sale, and may pay such portions of their bids as their bonds shall be entitled to under the said decree by indorsement of the said amounts on their bonds. That the amounts due under each of the said mortgages may be determined and accurately fixed by the said decree, and that judgment may be rendered against the Washington Northern Railroad Company for the amount of its debt, and against Oregon-Washington Timber Company for the amount of its debt. That your orators may be awarded in and by the said decree a reasonable and suitable sum for their services in administering the said trust and in foreclosing the said mortgages, and that they may likewise be awarded reasonable sums for the services of their attorneys, and that they may be allowed for all disbursements made by them, and for the usual costs of the said suit, and your orators also pray that they may have such other and further relief as shall

be equitable and meet in the premises.

HUFFER & HAYDEN,
Solicitors for Complainants.

SNOW & McCAMANT.

(Verified.)

(Acceptance of Service.)

(Filed Dec. 6, 1913.) [31]

[Title of Court and Cause.]

Answer.

Comes now the defendant William W. Crawford, trustee, and answering the amended bill of complaint on file herein, for cause of answer says:

I.

He admits that the Mississippi Valley Trust Company is a corporation, organized and subsisting under the laws of the State of Missouri, and authorized by its charter to administer trusts and to perform the offices, duties and functions of a trustee, and that it is a citizen and resident of the State of Missouri. That as to whether the Mississippi Valley Trust Company is authorized to administer trusts and to perform the offices, duties and functions averred in the complaint in the State of Washington, this defendant has no knowledge. [32]

II.

Answering the second paragraph of the amended bill of complaint, this defendant admits that the Union Trust Company is a corporation, organized under the laws of the State of Michigan and is a citizen and resident of the State of Michigan; but as to whether said corporation is empowered by its char-

ter to administer trusts and to perform the offices, duties and functions of a trustee, as averred in said amended bill of complaint within the State of Washington, this defendant has no knowledge.

III.

Answering the third paragraph of the amended bill of complaint this defendant admits that the Washington Northern Railroad Company is a corporation, duly organized under the laws of the State of Oregon. That as to whether it is empowered by its charter to operate a railroad as a private carrier within the State of Washington this defendant has no knowledge. He admits that the Oregon-Washington Railroad Company is a citizen and resident of the State of Oregon; as to whether the said railroad company has filed with the Secretary of State of the State of Washington a certified copy of its articles of incorporation, or named a state agent for the State of Washington, or paid the license fees required by the statutes of the State of Washington from foreign corporations, or as to whether said railroad company is qualified for the transaction of business within the State of Washington by a continued compliance with said laws, or at all, this defendant has no knowledge.

IV.

Answering the fourth paragraph of the amended bill of complaint, this defendant admits that the Oregon-Washington Timber Company is a corporation, organized and subsisting under [33] the laws of the State of Oregon, and empowered under its charter to own timber and timber lands and

manufacture timber products within the State of Washington. That as to whether said timber company has filed a certified copy of its articles of incorporation with the Secretary of State of the State of Washington, or named a state agent for the State of Washington, or has paid the license fees required by the statutes of the State of Washington from foreign corporations, or by compliance with said statutes been authorized and empowered to transact business within the State of Washington, this defendant has no knowledge.

V.

This defendant admits that William W. Crawford, trustee, is now, and at all the times hereinafter mentioned has been, a citizen and resident of the State of Illinois, residing in the city of Chicago therein.

VI.

Answering the sixth paragraph of the amended bill of complaint, this defendant admits the same.

VII.

Answering the seventh paragraph of said amended bill of complaint, this defendant admits that this is a suit between citizens and residents of different states, and that the amount in controversy exceeds \$3000, exclusive of interest and costs, and admits that it is an action for the foreclosure of certain liens on property situate within the Western District of Washington and within the Southern Division thereof, which property consists in part of real property, in part of personal property and in part of easements, servitudes and rights-of-way on real

property, all situate within said district. [34]

VIII.

Answering the eighth paragraph of the amended bill of complaint, this defendant admits that on the 4th day of June, 1910, the Washington Northern Railroad Company made, executed and delivered to the Mississippi Valley Trust Company, as trustee, a certain mortgage and deed of trust, covering certain property described in said paragraph of said amended bill of complaint, and admits that said mortgage contained a provision that all after acquired property by the railroad company should become a part of the security under the said mortgage or deed of trust; admits that at the date of the execution of said mortgage and deed of trust the railroad company was engaged in the operation of certain railroad property owned by it; but as to whether the railroad property described in said paragraph is the railroad property now owned by the railroad company, this defendant has no knowledge. Admits that the railroad company has continued in the operation thereof up to the time of the commencement of this action; admits that subsequent to the 4th day of June, 1910, the railroad company acquired additional rights of way and that additional lines of railroad have been constructed, and extensions of the said railroad have been made and branches thereof been built and put into operation and are now owned by said railroad company, and that cars and other equipment have likewise been acquired. As to whether said railroad now extends northerly, northeasterly and northwesterly, or in any other

direction from the original northern terminus of said railroad, as described in said amended bill of complaint, this defendant has no knowledge. He admits that said mortgage was legally executed and acknowledged, and recorded on the 10th of June, 1910, in the office of the auditor of Skamania County, Washington, at [35] in book "I" at page 339 thereof of the mortgage records of Skamania County, Washington.

IX.

Answering the ninth paragraph of said amended bill of complaint, this defendant admits that the mortgage referred to in paragraph eight of the amended bill of complaint was executed by way of security for a bond issue in the aggregate sum of One Million Dollars (\$1,000,000), and that one thousand (1000) negotiable bonds, each of the denomination of One Thousand Dollars (\$1000), and numbered from one (1) to one thousand (1000) consecutively, were issued, and that said bonds were in substantially the form set forth in said paragraph of said amended bill of complaint. He admits that the debt represented by said bonds should bear interest at the rate of 6% per annum, payable on the first day of May and the first day of November of each year and that the principal of said bonds should become payable on the first of May, 1928, subject to certain provisions as to the prior payment contained in said bonds and said deed of trust.

X.

Answering paragraph ten of said amended bill of complaint, this defendant admits that the railroad

company covenanted to pay the bonds so issued under said mortgage and the interest thereon as the same matured, and admits that it covenanted to pay all taxes and assessments, and to pay mechanics' liens and other liens which might have priority over said mortgage, and that said bonds should constitute at all times until paid a first lien upon the property. That as to whether said mortgage provided that the trustee should have a lien, prior to that the bonds, for money advanced for the payment of insurance, taxes, assessments, or other liens, or as to whether the [36] said trustee should have a reasonable sum for its services in protecting the property, or as to whether such advances made by the trustee should be deemed a part of the debt secured by the mortgage or deed of trust, this defendant has no knowledge.

That as to whether it was provided in said mortgage that if default should be made in the payment of any sum of money called for by said bonds, or in the performance of any other covenant on the part of the railroad company, in case said *said* default should continue for thirty days after written notice, the Mississippi Valley Trust Company might, at its option, declare the entire principal of the bonds then outstanding due and payable by the railroad company, or whether the Mississippi Valley Trust Company should be empowered to foreclose in such case, this defendant has no knowledge.

That as to whether of the proceeds of the mortgage foreclosure sale the Trust Company should be entitled to compensation for its services, or for its

expenses, or for its attorney's fees, this defendant has no knowledge.

That as to whether it was provided in said mortgage that upon any foreclosure sale being made of the mortgaged premises the principal of all the bonds secured thereby and then outstanding should become due and payable, this defendant has no knowledge.

That as to whether the railroad company consented to the appointment of a receiver and to his custody of the property, or as to the application on the expenses of the trustee and the debt secured by the said mortgage of any moneys and proceeds of the sale of the property in the hands of the receiver, this defendant has no knowledge.

That as to whether it was provided in said mortgage that it should be competent for the receiver to operate the railroad [37] *the railroad company* or to carry on any of the operations of the railroad company, or whether the railroad company consented to the operation of its property by said receiver, this defendant has no knowledge.

XI.

Answering the eleventh paragraph of the amended bill of complaint, this defendant admits that the interest called for by the bonds described in the complaint, up to and including the first of May, 1912, has been paid. That as to whether the interest maturing on the first of November, 1912, has been paid, or whether the interest maturing on the first of May, 1913, has been paid, or whether the interest maturing on the first of November, 1913, has been paid, this defendant has no knowledge.

That as to whether the interest has been demanded by the Mississippi Valley Trust Company and the bondholders, or as to whether the railroad company has failed or neglected to pay the same or the whole thereof, or any part thereof, this defendant has no knowledge.

That as to whether the railroad company has neglected to pay the taxes for the years 1912 and 1913, this defendant has no knowledge. That as to whether taxes have been legally levied upon said property, or as to whether the Trust Company has elected to declare the entire debt due and owing, this defendant has no knowledge.

That as to whether the Trust Company served notice upon the railroad company in writing and pursuant to the provisions of the mortgage, of its demand for the payment of the delinquent interest, as alleged in the amended bill of complaint, or of its election to declare the entire debt due and owing unless the money so due and unpaid was paid within thirty days from the date of such notice, or as to whether any notice was given [38] on account of any alleged default, this defendant has no knowledge. Neither has he knowledge as to whether such notice was given more than thirty days before the commencement of this action, or whether any notice of any kind was given by the trustee or the bondholders, in accordance with the provisions of the mortgage.

XII.

Answering the twelfth paragraph of the amended bill of complaint, this defendant says: That as to

whether it was provided in said mortgage that the security might be sold either as an entirety or in parcels, or that the property could not be sold to advantage, except as an entirety, or that it would be impracticable to operate the same except under one ownership, or that an attempt to sell the property piecemeal or in parcels would result in a sacrifice thereof, or that it was necessary for the conservation of the property and the protection of the lien thereon that the said property should be sold as an entirety, this defendant has no knowledge.

XIII.

Answering the thirteenth paragraph of said amended bill of complaint, this defendant says: That as to whether the railroad company has defaulted in the payment of its obligations or any of them prior to the commencement of this action he has no knowledge. That as to whether it was threatened with attachments or levies upon its property, or whether it was unable to operate its property or protect the same at the time of the commencement of this action, this defendant is not advised. That as to whether said railroad company was at the time of the institution of this suit unable to pay its taxes and lawful assessments levied upon its said property or to be levied thereon, this defendant has no knowledge. knowledge. [39]

That as to whether it was necessary to have a receiver of the property of the railroad company appointed at the time of the commencement of this action, or at all, this defendant has no knowledge.

XIV.

Answering the fourteenth paragraph of said amended bill of complaint, this defendant admits that on the 4th of June, 1910, the Oregon-Washington Timber Company executed to the Mississippi Valley Trust Company its certain mortgage or deed of trust, covering certain real and personal property, but as to whether the property described in said paragraph fourteen is a correct description of said property, this defendant is not advised. He admits that said mortgage contained a provision covering after acquired property by said timber company; admits that the mortgage was recorded in the office of the auditor of Skamania County, Washington, in book "I" of mortgages at page 296 thereof, but as to whether said mortgage constitutes in law a first lien and encumbrance upon said property and the whole thereof, this defendant is not advised.

XV.

Answering the fifteenth paragraph of said amended bill of complaint, this defendant admits that the mortgage executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company was given as security for bonds in the aggregate sum of Six Hundred Thousand Dollars (\$600,000), numbered from one (1) to six hundred (600), payable to bearer and bearing interest at the rate of 6% per annum, interest payable on the first day of May and the first day of November of each year; admits that by the terms of said bonds \$30,000 thereof matured on the first of May, 1912, and that a like amount matured at [40] intervals of six

months thereafter, and that the interest on said bonds was evidenced by coupons and that the bonds and coupons were negotiable in form and payable to bearer; but as to whether said \$600,000 of bonds were legally authorized, or as to whether they constituted a legal and binding obligation of the Oregon-Washington Timber Company, or as to whether they were executed for a purpose, or whether there was any consideration for the execution of said bonds, this defendant is not fully advised, and leaves complainants to their proof.

XVI.

Answering the sixteenth paragraph of said amended bill of complaint, this defendant admits that upon the execution of the mortgage given by the Washington Northern Railroad Company to the Mississippi Valley Trust Company, described in the amended bill of complaint, the defendant Oregon-Washington Timber Company attempted to purchase from the Washington Northern Railroad Company the entire issue of bonds secured by the mortgage described in the amended bill of complaint, given by the Washington Northern Railroad Company to the Mississippi Valley Trust Company; but as to whether said attempted sale was for a valuable consideration this defendant is without knowledge. That as to whether the timber company became the owner of the said entire issue of bonds this defendant is not advised. Neither is he advised as to whether the acts performed in the attempt to purchase said bonds constituted a sale of the bonds by the railroad company to the timber company.

This defendant admits that after such attempted sale of said bonds by the railroad company to the timber company bonds of said issue by the railroad company to the amount of Six Hundred Thousand Dollars (\$600,000) and numbered from one (1) to six hundred (600), inclusive, were attempted to be sold, assigned [41] and transferred to the Mississippi Valley Trust Company in and by the mortgage described in paragraph fourteen of the amended bill of complaint and as part security for the \$600,000 of bonds issued by the timber company and secured by the mortgage or trust deed of that company to the Mississippi Valley Trust Company. This defendant admits that it was provided in the mortgage given by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company that when the bonds secured thereby should be paid and cancelled by the trustee, a like amount par value of the bonds of the Washington Northern Railroad Company, so attempted to be conveyed and transferred as part of said security, should also be cancelled by the trustee and returned to the Washington Northern Railroad Company, or delivered to the Washington Northern Railroad Company uncanceled, at its option.

XVII.

Answering the seventeenth paragraph of the amended bill of complaint, this defendant says: That as to whether by the terms of the mortgage given by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company it was provided that the mortgagor or timber company would annually pay into the hands of the Trustee a sum of

money not less than Forty-five Thousand Dollars (\$45,000) to be derived from the logging of timber situated on the property described in the said mortgage, this defendant has no knowledge. That he has no knowledge as to whether such payments would have created a sinking fund for the retirement of the bonds of the Oregon-Washington Timber Company in the sum of Ninety Thousand Dollars (\$90,000), or in any other sum.

XVIII.

Answering the eighteenth paragraph of said amended bill of [42] complaint, this defendant says: That he has no knowledge as to the exact formalities required by the mortgage for the appointment of a cotrustee of said mortgage by the Mississippi Valley Trust Company; and that he has no knowledge as to whether the attempted appointment of the Union Trust Company as a cotrustee was made in accordance with the covenants and provisions of said mortgage.

XIX.

Answering the nineteenth paragraph of said amended bill of complaint, this defendant says that he has no knowledge as to the covenants of the mortgage with reference to the payment of taxes and assessments, or as to whether a failure to pay such taxes would constitute a default of the mortgage.

XX.

Answering the twentieth paragraph of said amended bill of complaint this defendant says: That as to whether the timber company has defaulted in the payment of the taxes on the property mentioned

in the mortgage of June 4th, 1910, for the years 1911, 1912 and 1913, or as to whether no part of said taxes have been paid, he has no knowledge. That as to whether a default has been made by the Oregon-Washington Timber Company in regard to the performance of any sinking fund provision contained in said mortgage, or as to whether the timber company has failed and neglected to pay the sum of \$45,000 or any other sum into the sinking fund for the year 1912, or as to whether the timber company has failed to pay the sum of \$45,000 or any other sum into the sinking fund for the year 1913, this defendant has no knowledge. That as to whether there has been a default in the payment of interest, except as hereinbefore stated, this defendant has no knowledge. That as to whether it was provided by the terms of the mortgage of the Oregon-Washington Timber Company to the Mississippi [43] Valley Trust Company that in case a default should be made in failing to perform the provisions thereof with regard to any sinking fund, or of taxes, or of interest, this defendant has no knowledge; neither has he any knowledge as to what demand should be made in the case of a default, or what notice should be given, or how the notice should be given. That as to whether on the second day of September, 1913, or any other time prior to the commencement of this action a demand in writing was made on the Oregon-Washington Timber Company for the payment of taxes, interest, or sinking fund obligation, or as to whether said payments have been made, or whether sixty days have elapsed since any notice was given, this defend-

ant has no knowledge; and he has no knowledge as to whether the complainants had the right to declare the entire debt due and owing, or as to whether they attempted to declare such debt due and owing.

XXI.

Answering the twenty-first paragraph of said amended bill of complaint, this defendants says: He admits that the entire bond issue secured by the mortgage executed by the Oregon-Washington Timber Company, amounting to \$600,000 has been negotiated and sold and is now outstanding, except \$30,000 of bonds which matured on the first day of May, 1912, which last mentioned bonds have been paid, and admits that the bonds which have been paid are numbered from one (1) to thirty (30) inclusive, for One Thousand Dollars each, that the same have been paid, cancelled and discharged, and admits that there was delivered by the Mississippi Valley Trust Company to the Washington Northern Railroad Company bonds in the sum of \$30,000, which bonds the Washington Northern Railroad Company elected to have delivered to it uncanceled. He admits that Five Hundred and Seventy Thousand Dollars (\$570,000) of the bonds issued by the Oregon-Washington [44] Timber Company have not been cancelled; but as to whether any portion of said bonds should have been cancelled this defendant is not fully advised, but avers that a portion of said bonds are unenforceable and should be cancelled, as will more fully appear in this answer. That as to what amount of interest is unpaid upon said bonds this defendant has no knowledge and leaves complainants to their proof.

XXII.

Answering the twenty-second paragraph of said amended bill of complaint, this defendant says: That as to whether it was provided in said mortgage that the trustees might take possession of said property directly or through a receiver to be appointed by a court of competent jurisdiction this defendant has no definite knowledge; that as to whether said Oregon-Washington Timber Company was insolvent at the time of the commencement of this action this defendant is not advised; but admits that at this time said Timber Company is unable to pay its obligations; that whether a necessity exists for the holding of the assets of said corporation by a receiver during the pendency of this action, this defendant is not advised.

XXIII.

Answering the twenty-third paragraph of said amended bill of complaint, this defendant says: That as to whether it was provided in said mortgage that the trustee under said mortgage should be allowed an attorney's fee and compensation to the receiver for the conduct of this foreclosure suit and for services performed by the trustee or trustees and their attorneys therein, or as to whether all of the costs and expenses, or any of the costs and expenses of said suit should be chargeable against the Oregon-Washington Timber Company, or against the security pledged under said mortgage, this defendant has no knowledge. [45]

XXIV.

Answering the twenty-fourth paragraph of said

amended bill of complaint, this defendant says: That he has no knowledge as to whether the Oregon-Washington Timber Company, the Washington Northern Railroad Company, and the Blazier Timber Company are controlled and dominated by the same set of officers; that he has no knowledge as to the present ownership of the stock of said corporations. He admits that there was an intimate connection between the officers of the said several companies at one time, but denies that the business of the Oregon-Washington Timber Company was wholly dependent upon the operation of the railroad of the Washington Northern Railroad Company, and denies that the operation of the Washington Northern Railroad Company is dependent upon the marketing of the timber upon the lands of the Oregon-Washington Timber Company; denies that the revenues of the Washington Northern Railroad Company are exclusively derived from the carriage of the timber products of the Oregon-Washington Timber Company, but admits that such service of the Oregon-Washington Timber Company furnishes a part of the revenues of said railroad company. That as to whether the Oregon-Washington Timber Company is a private carrier or a common carrier this defendant has no knowledge.

This defendant admits that the timber lands of the Oregon-Washington Timber Company, described in the amended bill of complaint contain a large body of timber, but as to its condition and whether it has been burned over, or would deteriorate in value if not marketed within a reasonable time this defend-

ant has no knowledge. That he has no knowledge as to whether said timber lands and the timber situated thereon are depreciating by reason of any fire that may have passed [46] through said timber.

XXV.

Answering the twenty-fifth paragraph of said amended bill of complaint, this defendant admits that the Washington Northern Railroad Company entered into a contract in writing with the Weist Logging Company and the Oregon-Washington Timber Company, under date of March 6th, 1911, relating to a certain logging outfit and property appurtenant thereto, which said property is particularly described in said contract; but whether said contract is recorded in book, 2 at page 155 of the record of agreements of the county of Skamania, State of Washington, this defendant has no knowledge. That said contract was in part one of lease by the Weist Logging Company to the Washington Northern Railroad Company, with a privilege to purchase by the railroad company for the sum of \$80,000. That said contract did not constitute a contract of purchase absolutely, but was merely conditional, with the title at all times reserved in the Weist Logging Company, and that the conditions contained in said contract or lease were never performed by the railroad company, and the title to the property never passed from the Weist Logging Company to the railroad company, and the railroad company never paid the \$80,000 nor any part thereof, except the sum of about \$30,000. And in this connection this defendant alleges that on the 30th of March, 1912, the railroad company, with

the consent of the Oregon-Washington Timber Company assigned to the Blazier Timber Company all of the property, rights and interest acquired by the railroad company under and by virtue of the contract of March 5th, 1911, and the Blazier Timber Company assumed payment of the balance necessary to be paid to the Weist Logging Company in order to procure title [47] to said property, the amount of the payment thus assumed being the sum of \$45,000. That the said assignment was recorded in book 2 of Leases and Agreements, at page 226 of the records in the office of the auditor of Skamania County, Washington. That the said sum of \$45,000 was paid by the Blazier Timber Company to the Weist Logging Company, and a conveyance was duly executed by the Weist Logging Company directly to the Blazier Timber Company of the property described in said lease or contract, executed by the Weist Logging Company, the Washington Northern Railroad Company and the Oregon-Washington Timber Company, under date of March 6th, 1911, and that all of the property thus transferred by the Weist Logging Company to the Blazier Timber Company is covered by and recorded in the deed of trust bearing date of March 1st, 1912, executed by the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company to this defendant, William W. Crawford, trustee, which mortgage or deed of trust will be more particularly described hereinafter in this answer. That none of the property acquired by the Blazier Timber Company from the Weist Logging

Company was ever included in or came under the provisions of the mortgage executed by the Washington Northern Railroad Company to the Mississippi Valley Trust Company under date of June 4th, 1910, and never came within or was included in or brought under the provisions of said mortgage; and that said property was never subject to the lien of said mortgage so executed by the Washington Northern Railroad Company to the Mississippi Valley Trust Company and was never subject to or brought under the lien of the mortgage executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company under date of June 4th, 1910, and particularly referred to in the amended bill of complaint. [48]

Further answering said paragraph twenty-five this defendant denies that the assignment of the property of the Weist Logging Company was taken with any knowledge of the claims of the Mississippi Valley Trust Company; denies that said property acquired from the Weist Logging Company was pledged under the provisions of the mortgage of the Washington Northern Railroad Company to the Mississippi Valley Trust Company, for the reason that the Washington Northern Railroad Company never had any right, title or interest in said property or any part thereof, and that the same did not constitute any part of the security or property covered by said mortgage of the Washington Northern Railroad Company to the Mississippi Valley Trust Company, and for the reason that the Mississippi Valley Trust Company had no claim or lien thereon of any nature or kind whatsoever.

XXVI.

Answering paragraph twenty-seven of said amended bill of complaint, this defendant admits that on the first of March, 1912, the defendants Washington Northern Railroad Company, Oregon-Washington Timber Company and the Blazier Timber Company made, executed and delivered to this defendant William W. Crawford, trustee, a certain mortgage or deed of trust, covering substantially all of the property of the Blazier Timber Company, described in the amended bill of complaint and all of the property of the Blazier Timber Company as well, and avers that said mortgage covered all of the property acquired by the Blazier Timber Company from the Weist Logging Company, as hereinbefore set forth.

This defendant admits that said mortgage so executed to the said William W. Crawford, trustee, covered and embraced all of the property described and referred to in the mortgages executed by the Washington Northern Railroad Company and the Oregon-[49] Washington Timber Company to the Mississippi Valley Trust Company under date of June 4th, 1910, and recognizes the priority of the said two mortgages as to the property described in said two mortgages, but avers that said mortgage so executed to said Crawford embraced other property than that described in the said mortgages executed to the Mississippi Valley Trust Company by the railroad company and by the timber company; and this defendant denies that said mortgages executed by the railroad company and the timber company to the trust com-

pany have priority over the mortgage executed to this defendant, as will more fully appear in this answer.

This defendant admits that the said defendant William W. Crawford claims a right in and a lien upon the property described in the said two mortgages executed by the railroad company and the timber company to the trust company.

XXVII.

Answering the twenty-eighth paragraph of said amended bill of complaint, this defendant admits that on the fourth of June, 1910, the Oregon-Washington Timber Company executed a second mortgage on the property described in paragraph fourteen of the amended bill of complaint for the security of \$400,000 of second mortgage bonds, and admits that said bond issue was sold by the defendant Oregon-Washington Timber Company to the defendant Washington Northern Railroad Company; and admits that as further security for said second mortgage bonds of the timber company, assigned and transferred to the Washington Northern Railroad Company \$400,000 in amount of the bonds of the Washington Northern Railroad Company; admits that the Mississippi Valley Trust Company is the Trustee under the second mortgage of the timber company and that the said \$400,000 of bonds of the Washington Northern Railroad Company together with the [50] second mortgage bonds of the Oregon-Washington Timber Company, were lodged with the Mississippi Valley Trust Company.

This defendant admits that under the mortgage

executed to the defendant William W. Crawford, trustee, the Washington Northern Railroad Company sold and assigned said \$400,000 of second mortgage bonds of the Oregon-Washington Timber Company, and in this connection this defendant avers that said assignment of the \$400,000 of the second mortgage bonds of the Oregon-Washington Timber Company carried with it the assignment of the \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company, numbered from six hundred one (601) to one thousand (1000) both inclusive. This defendant admits that said mortgage to this defendant William W. Crawford also assigned the \$600,000 of the first mortgage bonds of the railroad company numbered from one (1) to six hundred (600), inclusive, as said bonds are from time to time released and delivered or releasable and deliverable by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgages of the Oregon-Washington Timber Company, and alleges that under the said mortgage to the said William W. Crawford the timber company assigned all of its right, title and interest in and to the \$400,000 second mortgage bonds, and also all of the right, title and interest in all of the bonds of the railroad company as they are from time to time released and delivered or releasable and deliverable under the terms and provisions of the first and second mortgages respectively of the Oregon-Washington Timber Company.

This defendant admits that it was provided in a certain agreement, dated June 4th, 1910, of the

Washington Northern Railroad Company and the Oregon-Washington Timber Company, that the [51] proceeds of the sale of the \$400,000 of second mortgage bonds of the timber company should be used for future extensions and betterments or equipments of the railroad company, after the expenditure of the proceeds of the sale of the \$600,000 of first mortgage bonds of the timber company. But in this connection this defendant avers that the \$400,000 second mortgage bonds of the timber company were pledged under the mortgage to the defendant William W. Crawford, trustee, by the joint action of the Washington Northern Railroad Company and the Oregon-Washington Timber Company.

This defendant denies that the rights of the said defendant Crawford in and to the \$400,000 of the second mortgage bonds of the timber company, with the \$400,000 of first mortgage bonds of the railroad company securing the same, were acquired with notice that the proceeds of said \$400,000 of second mortgage bonds of the timber company should be applied in building extensions of the railroad company and in equipping the same.

Defendant further denies that he had any knowledge as to how the proceeds of the said \$400,000 second mortgage bonds of the timber company were to be expended. And in this connection this defendant avers that the said William W. Crawford, trustee, as owner of \$400,000 in amount of the first mortgage bonds of the railroad company, numbered from six hundred one (601) to one thousand (1000), inclusive, and as the owner of \$30,000 in amount

of the first mortgage bonds of the railroad company numbered from one (1) to thirty (30) inclusive, is entitled to participate with the holders of the \$570,000 in amount of the bonds of the Washington Northern Railroad Company in the proceeds of the sale of the property covered by the mortgage of the railroad company; provided, that the holders of said \$570,000 of [52] bonds of the railroad company are not estopped by their action from participating in the proceeds of the sale of the property, and as to such portion of the said \$570,000 of said bonds as may be held by parties who are estopped to participate in the proceeds of the sale of the property of the railroad company this defendant avers that he is entitled to priority. But this defendant denies that it is necessary for the protection of the complainants that this priority as between the holders of the first mortgage bonds of the railroad company should be determined in this action, which he alleges is an action brought by two different mortgagees against two different mortgagors securing two different obligations and covering two different sets and classes of property.

XXVIII.

Answering the twenty-ninth paragraph of said amended bill of complaint, this defendant admits the allegations contained in said paragraph.

XXIX.

Answering the thirtieth paragraph of said amended bill of complaint, this defendant denies the allegations in said paragraph contained.

And for further and first affirmative defense to

complainants' amended bill of complaint, this defendant alleges:

1.

That said amended bill of complaint shows upon its face that two separate causes of action have been improperly united in said amended bill of complaint, and that said amended bill of complaint is multifarious, said amended bill of complaint embracing: (a) an action by the Mississippi Valley Trust Company to foreclose a mortgage executed by the Washington Northern [53] Railroad Company to the Mississippi Valley Trust Company, Trustee, to secure an issue of bonds in the aggregate amount of One Million Dollars (\$1,000,000); (b) an action by the Mississippi Valley Trust Company and the Union Trust Company, Trustees, to foreclose a mortgage executed by the Oregon-Washington Timber Company, a corporation, to the Mississippi Valley Trust Company and the Union Trust Company to secure an issue of bonds of the Oregon-Washington Timber Company in the aggregate amount of Six Hundred Thousand Dollars (\$600,000), and that by so doing there is a misjoinder of causes of action in said amended bill of complaint.

2.

That there is a misjoinder of parties plaintiff in that the Mississippi Valley Trust Company, trustee under the mortgage of the Washington Northern Railroad Company, is joined in a complaint with the Mississippi Valley Trust Company and the Union Trust Company, trustees under the mortgage executed by the Oregon-Washington Timber Company.

3.

That there is a misjoinder of parties defendant in that the Washington Northern Railroad Company, which executed the mortgage upon the property of the railroad company to secure an issue of bonds by the railroad company, is joined as a defendant with the Oregon-Washington Timber Company, which executed a mortgage to the Mississippi Valley Trust Company and the Union Trust Company to secure an issue of bonds by the Oregon-Washington Timber Company.

4.

That the amended bill of complaint shows upon its face that the Mississippi Valley Trust Company holds \$570,000 of [54] the bonds of the Washington Northern Railroad Company as collateral security for the payment of the bonds issued by the Oregon-Washington Timber Company, and the amended bill of complaint discloses an attempt to foreclose two separate mortgages executed by two different parties, involving two distinct subject matters, in one action, and that the causes of action so attempted to be joined are not joint; and the liability asserted against the Oregon-Washington Timber Company is distinct, separate and different from the liability asserted against the defendant, the Washington Northern Railroad Company, and sufficient grounds are not shown for uniting the said causes of action in order to promote the convenient administration of justice.

And for a further and second affirmative defense to said amended bill of complaint, this defendant alleges:

1.

That on or about the first of March, 1912, the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blasier Timber Company executed and delivered to this defendant, William W. Crawford, trustee, a certain mortgage or deed of trust, pursuant to a resolution unanimously adopted by all of the trustees and all of the stockholders of said three respective companies, upon all of the property of every nature and kind of each of said companies, to secure an issue of bonds in the sum of Four Hundred and Twenty-five Thousand Dollars (\$425,000), known as "First and General Lien Six Per Cent Gold Notes," numbered from one (1) to four hundred twenty-five (425) inclusive, of the denomination of One Thousand Dollars (\$1,000) each, and maturing at different dates and times, the last of which notes matured, according to the terms and provisions of [55] the trust deed, on March 1st, 1917, which said property so conveyed or mortgaged to this defendant, William W. Crawford, is particularly set forth in said deed of trust of March 1st, 1912, which has been duly recorded in the office of the auditor of Skamania County, Washington; and the said mortgage by said several companies to this defendant is hereby by reference incorporated in this answer, and this defendant prays leave at any and all times to present the said mortgage, or a true copy thereof for consideration by the Court in further elaboration of this defendant's answer.

2.

That in the mortgage of March 1st, 1912, executed by the said several companies to this defendant Crawford, there is contained, among other provisions, the following:

“It is understood and hereby expressly declared: That the property of the Railroad Company is now subject to the lien of that certain mortgage deed of trust dated June 4, A. D. 1910, executed by the Railroad Company to the Mississippi Valley Trust Company, Trustee (a Missouri corporation having its principal office and place of business in the City of St. Louis in the State of Missouri), and recorded in the office of the County Auditor of Skamania County, Washington, in Book “I” of Mortgages on pages 339 to 356, both inclusive, in order to secure the payment of the principal sum of and interest on that certain issue of first mortgage six per cent gold bonds of the Railroad Company, being 1000 bonds, numbered from 1 to 1000, both inclusive, and of the denomination of \$1000 each, dated as of June 4, A. D. 1910, and due May 1, A. D. 1928.

That 600 of the aforesaid bonds, being bonds numbered from 1 to 600, both inclusive, have been pledged or assigned as collateral security for that certain issue of first mortgage six per cent gold bonds of the Timber Company, aggregating the principal sum of \$600,000, issued under and secured by a mortgage deed of trust executed by the Timber Company to the said

Mississippi Valley Trust Company, Trustee, under date of June 4, A. D. 1910; which said 600 bonds of the Railroad Company, now held by Mississippi Valley Trust Company, Trustee, as collateral security as aforesaid, are by the terms of said mortgage deed of trust of the Timber Company, required to be delivered uncanceled to the Railroad Company upon its demand from time to time, in like amounts and in the order of their corresponding numbers, as the said bonds of the Timber Company are paid.

That 400 of the aforesaid bonds of the Railroad Company, being bonds numbered 601 to 1000, both inclusive, have been pledged or assigned as collateral security for that certain [56] issue of second mortgage six per cent bonds of the Timber Company, aggregating the principal sum of \$400,000, issued under and secured by a second mortgage deed of trust, executed by the Timber Company to the said Mississippi Valley Trust Company, Trustee, under date of June 4, A. D. 1910; which said 400 bonds of the Railroad Company now held by the Mississippi Valley Trust Company as collateral security as aforesaid, are by the terms of the said second mortgage deed of trust of the Timber Company required to be delivered uncanceled to the Railroad Company upon its demand from time to time, in like amounts and in the order of their corresponding numbers, as the said second mortgage bonds of the Timber Company are paid.

That said \$400,000 second mortgage bonds of the Timber Company were duly issued to and the Railroad Company is now the lawful owner of the same, and is authorized and empowered to use, negotiate, assign and pledge the same for its corporate purposes.

That the Railroad Company is duly authorized and empowered to issue, use, negotiate, pledge or assign, for its corporate purposes, its said bonds as they are surrendered and delivered to *is* as aforesaid.

Now, therefore, for the consideration aforesaid, and as a part of the security furnished by the Railroad Company for the payment of the principal of and interest on the notes issued hereunder and secured hereby, the Railroad Company does hereby further sell, assign, pledge, transfer and set over to the Trustee (a) said \$400,000 second mortgage bonds of the Timber Company; (b) the said \$1,000,000 first mortgage bonds of the Railroad Company as they are from time to time released and delivered, or releasable and deliverable, by the said Mississippi Valley Trust Company under the terms and provisions of the said first and second mortgage deeds of trust, respectively, of the Timber Company.”

3.

That in the said mortgage to the said Crawford there is also contained, among other things, the following provision:

“It is understood and hereby expressly de-

clared that the property of the Timber Company is now subject to the lien of two mortgage deeds of trust, viz:

(a) A first mortgage deed of trust, dated June 4, A. D. 1910, executed by the Timber Company to the Mississippi Valley Trust Company, hereinabove mentioned (and recorded in the office of the County Auditor of Skamania County, Washington, in Book "I" of Mortgages, at page 296) to secure the payment of the principal of and interest on that certain issue of 600 first mortgage six per cent gold bonds of the Timber Company, numbered from one (1) to six hundred (600), both inclusive, of the denomination of One Thousand Dollars (\$1000) each, dated June 4, 1910, and maturing serially \$30,000 in amount on May 1st and November 1st in each of the years 1912 to 1921, both inclusive, and by and under which mortgage deed of trust the first mortgage bonds of the Railroad Company to the amount of \$600,000 face value (being bonds numbered 1 to 600) have been pledged or assigned to the said Mississippi Valley Trust Company, Trustee, as further and [57] collateral security for said first mortgage bonds of the Timber Company, but which said bonds of the Railroad Company are to be surrendered to it from time to time as the said first mortgage bonds of the Timber Company are paid, as hereinabove more fully stated.

(b) A second mortgage deed of trust, dated

June 4, A. D. 1910, executed by the Timber Company to the said Mississippi Valley Trust Company (and recorded in the office of the county auditor of Skamania County, Washington, in Book "I" of Mortgages, at page 316) to secure the payment of the principal of and interest on that certain issue of four hundred (400) second mortgage six per cent gold bonds of the Timber Company, numbered from one (1) to four hundred (400), both inclusive, of the denomination of \$1000 each, dated June 4, 1910, and maturing serially \$30,000 in amount on May 1 and November 1 in each of the years 1922 to 1928, both inclusive; and by and under which mortgage deed of trust the first mortgage bonds of the Railroad Company to the aggregate amount of \$400,000 face value (being bonds numbered 601-1000) have been pledged or assigned to the said Mississippi Valley Trust Company, as further and collateral security for said second mortgage bonds of the Timber Company, but which said bonds of the Railroad Company are to be surrendered to it from time to time as the said second mortgage bonds of the Timber Company are paid as hereinabove more fully stated.

All of said first mortgage bonds of the Timber Company have been sold and *issued are* now outstanding; and all of said second mortgage bonds of the Timber Company have been duly sold and issued and the Railroad Company is now the lawful owner thereof.

NOW, THEREFORE, for the consideration aforesaid and as a part of the security furnished by the Timber Company for the payment of the principal of and interest on the notes issued hereunder and secured hereby, the Timber Company does hereby further sell, assign, pledge, transfer and set over to the Trustee all of its right, title and interest, in, to and under its aforesaid \$400,000 second mortgage bonds, and also said bonds of the Railroad Company as they are from time to time released and delivered, or releasable and deliverable, under the terms and provisions of the first and second mortgage deeds of trust, respectively, of the Timber Company.”

4.

That by virtue of the foregoing provisions this defendant as trustee, became the owner and holder of \$400,000 of the second mortgage bonds of the Oregon-Washington Timber Company, together with \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company which were pledged as collateral security for the payment of the \$400,000 of second mortgage [58] bonds of the Oregon-Washington Timber Company, and which were at the time of the execution of said mortgage lodged with the Mississippi Trust Company; and this defendant also, by virtue of said mortgage, became entitled to the \$600,000 of first mortgage bonds of the railroad company, held as collateral security by the Mississippi Valley Trust Company for the payment of the \$600,000 first mort-

gage bonds of the Oregon-Washington Timber Company, as such first mortgage bonds of the Railroad Company are from time to time released and delivered or releasable and deliverable by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgages of the timber company, referred to in the amended bill of complaint; and under and by virtue of the provisions of said mortgage to the defendant Crawford of March 1st, 1912, this defendant acquired a first lien upon all of the property of the Blazier Timber Company, which is particularly described in said mortgage to the said Crawford, a description of which property is hereby incorporated in this answer by reference to the record of the mortgage to the said Crawford in the office of the auditor of Skamania County, Washington. That the \$425,000 "First and General Lien Six Per Cent Gold Notes" have been negotiated and the proceeds therefrom paid over to the Washington Northern Railroad Company and the Washington-Oregon Timber Company and the Blazier Timber Company.

That the property mortgaged by the Blazier Timber Company to secure the said \$425,000 notes described in the Crawford mortgage is of less value than \$425,000, and that such security is wholly inadequate to pay said notes, or any considerable part thereof, and that this defendant Crawford as trustee will be compelled to rely, in large part, for the payment of the \$425,000 upon the property mortgaged to him by the Oregon-Washington [59] Timber Company and the Washington Northern

Railroad Company. That the said companies are at this time insolvent and unable to pay any considerable part of their outstanding obligations, and that this defendant has a vital interest in having the proceeds of the sale of the properties of the Washington Northern Railroad Company and the Oregon-Washington Timber Company applied toward the payment of the \$425,000 notes in so far as the same are applicable, under the terms and provisions of the mortgage to said William W. Crawford of March 1st, 1912; and is vitally interested in having determined what portion, if any, of the proceeds of the sale of the properties of the railroad company and of the timber company should be applied toward the payment of the \$570,000 of first mortgage bonds of the timber company held by the Mississippi Valley Trust Company as Trustee.

5.

That under the provisions of the mortgages executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company it was provided that whenever a bond, either first or second, of the timber company was paid by the timber company, a bond for the same amount of the Washington Northern Railroad Company was to be returned to the railroad company, cancelled or uncancelled, at the option of the railroad company, and the trustee was required to return to the railroad company such bond upon the payment of one of the timber company's bonds, and similar provisions were inserted in said mortgages for the surrender of the interest coupons appertaining to the

railroad company's bonds from time to time as the interest coupons appertaining to the timber company's bonds were paid. And the alleged purchase by the timber company of the bonds of the railroad company discloses that it was the intention of the parties [60] to use the bonds of the railroad company merely as collateral security for the bonds of the timber company.

That the resolutions adopted by the trustees and stockholders of the Oregon-Washington Timber Company, and of the Washington Northern Railroad Company, and the agreement between the railroad company and the timber company disclose that the proceeds of the \$600,000 first mortgage bonds of the timber company, amounting to \$540,000, were to be used as follows:

- a. For the retirement of the outstanding mortgage of \$150,000 then on the property of the railroad company, which mortgage was pledged as additional collateral to secure the payment of a first mortgage for the same amount, it being understood that the payment of \$150,000 should operate as a release of both the \$150,000 mortgage of the railroad company and the \$150,000 mortgage of the timber company\$150,000.00
- b. For the payment of the floating indebtedness of the railroad company.. 125,000.00

- c. For extensions, betterments and improvements of the property of the railroad company 915,000.00
- d. Loaned to the timber company by the railroad company 50,000.00

—all of which is set forth in a certain agreement dated June 4, 1910, executed by the Washington Northern Railroad Company and the Oregon-Washington Timber Company, which said agreement is in words and figures following, to wit:

“SALE OF \$1,000,000 WASHINGTON NORTHERN RAILROAD COMPANY 6% BONDS.

Portland, Oregon, June 4, 1910.

Washington Northern Railroad Company,

Portland, Oregon.

Dear Sirs:

We understand that you are proposing to make certain extensions to your railroad (formerly owned by the Cape Horn Railroad Company), the result of which will be to increase our facilities for marketing the timber from our lands in Skamania County, Washington, and that you have authorized an issue of One Million Dollars (\$1,000,000) par value first mortgage six per cent gold bonds, dated the 4th day of June, 1910, due on the first day of May, 1928, and secured by a first mortgage on your railroad property. [61]

We propose to buy from you the entire issue of One Million Dollars (\$1,000,000) par value of said bonds and pay you therefor Four Hundred Thousand Dollars (\$400,000) par value of our bonds as hereinafter described, and the sum of Five Hundred

and Forty Thousand Dollars in money, said money to be used for the following purposes:

One Hundred and Fifty Thousand Dollars (\$150,000) to be used for the present or future payment or retirement of the outstanding first mortgage for \$150,000 now on your railroad property, which mortgage is now pledged an additional collateral to secure the payment of a first mortgage for the same amount on our lands and timber in Skamania County, Washington, it being understood that both of said \$150,000 first mortgages shall be paid and released by the payment of said \$150,000.

\$125,000 to be used for the payment of the present floating indebtedness of the Cape Horn Railroad Company.

\$215,000 to be used for extensions, betterments and equipment to your railroad property.

\$50,000 to be loaned by you to us on our note for that amount dated the 4th day of June, 1910, due on demand, with interest from its date at the rate of six per cent per annum. Said loan and interest to be repaid by us by the payment to you (until said loan and interest are paid) of fifty (50) cents on every one thousand (1000) feet, board measure, of logs taken from our timber lands in Skamania County, Washington, after January 1st, 1911, and we agree to take from said lands and ship over your railroad at least sixty millions (60,000,000) feet of logs every year, beginning January 1st, 1911, until all the merchantable timber on said lands is exhausted, and upon our failure so to do and to make said payments of fifty (50) cents for every 1000 feet

of logs we agree to at once pay said note and interest, or the balance due or to become due thereon in cash. Said payments to be made on or before the 10th day of each month for all logs taken during the previous month.

As a further consideration for the sale to us of said One Million Dollars (\$1,000,000) of your bonds, and without any new or further consideration, we agree to sell and deliver to you Four Hundred Thousand Dollars (\$400,000) par value six per cent gold bonds issued by us, dated the 4th day of June, 1910, due serially \$30,000 par value every six months, beginning May 1st, 1922, the last \$40,000 thereof maturing May 1st, 1928, and secured by second mortgage on our lands and timber in Skamania County, Washington, and secured also by \$400,000 par value of the \$1,000,000 par value of bonds now proposed to be purchased by us from you; said \$400,000 par value of our bonds so sold to you, however, or the proceeds of the sale thereof, to be used by you only for future extensions, betterments or equipment to your railroad, after the expenditure of the said sum of \$540,000 above mentioned.

The \$1,000,000 par value of your bonds hereby proposed to be purchased by us are all to be executed and delivered by you to the trustee in the mortgage securing the same, and to be by said trustee duly authenticated, and \$600,000 par value thereof to be deposited with the Mississippi Valley Trust Company of St. Louis, Missouri, to be by it held in trust as security under the terms of a certain first mortgage dated June 4, 1910, executed

[62] by us to said Mississippi Valley Trust Company to secure an issue of \$600,000 par value 6% gold bonds issued by us, and the remaining \$400,000 par value of your bonds hereby proposed to be purchased are to be deposited with the said Mississippi Valley Trust Company to be by it held in trust as security under the terms of a certain second mortgage dated June 4th, 1910, executed by us to said Trust Company to secure an issue of Four Hundred Thousand Dollars (\$400,000) par value second mortgagee 6% gold bonds issued by us, which latter \$400,000 par value second mortgage bonds are the bonds hereinabove agreed to be sold and delivered to you.

The said sum of \$540,000 to be deposited as needed for the purposes mentioned above to your credit at said Mississippi Valley Trust Company and to be paid out on checks signed by you and countersigned by said Trust Company for said purposes.

Your agreement to the above proposition to be indicated by your written acceptance indorsed hereon.

Yours truly,

OREGON-WASHINGTON TIMBER COMPANY.

By J. E. BLAZIER,
President.

Accepted: June 4, 1910.

WASHINGTON NORTHERN RAILROAD COMPANY.

By E. J. BLAZIER,
President.

I, E. J. Blazier, Secretary of the Oregon-Washington Timber Company, hereby certify that the foregoing is a true and correct copy of the original agreement covering sale of \$1,000,000 Washington Northern Railroad Company 6 % bonds by said railroad company to said timber company; said agreement dated June 4th, 1910, and accepted by said railroad company on same date.

In witness whereof, I have hereunto set my hand and the seal of said Oregon-Washington Timber Company, this 21st day of February, 1912.

[Seal]

E. J. BLAZIER,
Secretary.

That the resolutions adopted by the trustees and stockholders of the Washington Northern Railroad Company and the Oregon-Washington Timber Company as to the above application of the proceeds of the \$600,000 of the first mortgage bonds of the timber company by the railroad company, and the fact of the foregoing agreement between the railroad company and the timber company were known to the Mississippi Valley Trust Company at [63] the time of the execution and delivery to it of the \$600,000 first mortgage bonds of the timber company.

6.

That on the 4th of June, 1910, the Oregon-Washington Timber Company entered into an agreement with Little & Hays of St. Louis, Missouri, for the sale of the \$600,000 first mortgage bonds of the timber company, which said agreement also discloses that the proceeds of the sale of said bonds were to

be applied to the purposes stated in the preceding paragraph, and that the proceeds of the sale of said bonds were to be placed to the credit of the Mississippi Valley Trust Company and paid out by the Trust Company upon the check of the railroad company for the purposes above stated, a copy of which agreement is as follows, to wit:

“Sale of \$600,000 OREGON-WASHINGTON TIMBER COMPANY 6% BONDS.

Portland, Oregon, June 4, 1910.

Messrs. Little & Hays,
St. Louis, Missouri.

Gentlemen:

We propose to sell to you our entire issue of \$600,000 par value of 6% gold bonds, secured by a first mortgage on our lands and timber in Skamania County, Washington, and secured also by \$600,000 par value of gold bonds of the Washington Northern Railroad Company, secured by a first mortgage on its railroad and equipment; and we also propose to include in said sale \$999,300 par value of the capital stock of said Washington Northern Railroad Company, all for the sum of \$540,000.

Said sum of \$540,000 to be used for the benefit of said Washington Northern Railroad Company, which is purposing to extend its railroad through our lands in Skamania County, Washington, thereby increasing our facilities for marketing our timber; and said sum is to be used for the following specific purposes, to wit:

\$150,000 to be used for the present or future payment or retirement of the outstanding first mortgage

for \$150,000 on the [64] property of said railroad company, which mortgage is now pledged as additional collateral to secure the payment of a first mortgage of the same amount on our lands and timber in Skamania County, Washington, its being understood that both of said \$150,000 first mortgages shall be paid and released by the payment of said \$150,000.

\$125,000 to be used for the payment of the present floating indebtedness of the Cape Horn Railroad Company.

\$215,000 to be used for extensions, betterments and equipments of the Washington Northern Railroad.

\$50,000 to be loaned by said railroad company to us on our note.

The \$500,000 par value of bonds hereby offered to be sold are to be duly executed by us and deposited with the Mississippi Valley Trust Company of St. Louis, Missouri, to be authenticated by it and delivered to you upon your demand from time to time, and upon the payment to said Mississippi Valley Trust Company of \$900 and accrued interest for every \$1,000 par value of bonds so delivered, the money so paid by you to be deposited in said Trust Company to the credit of said Washington Northern Railroad Company and to be paid out for the purposes above mentioned on the check of said Railroad Company, countersigned by said Trust Company.

Your agreement to the above proposition to be in-

icated by your written acceptance endorsed hereon.
OREGON-WASHINGTON TIMBER COM-
PANY.

By J. E. BLAZIER,
President.

Accepted June 10th, 1910.

LITTLE & HAYS.

By FRANK P. HAYS.

I, E. J. Blazier, secretary of the Oregon-Washing-
ton Timber Company, hereby certify that the fore-
going is a true and correct copy of the original agree-
ment covering sale of \$600,000 first mortgage 5%
bonds of said corporation, dated June 4, 1910, and
accepted by the firm of Little and Hays, of St. Louis,
Missouri, on June 10th, 1910.

In Witness Whereof I have hereunto set my hand
and the seal of said corporation at Portland, Oregon,
this 21st day of February, 1912.

[Seal]

E. J. BLAZIER,
Secretary."

That a syndicate was formed by Little & Hays of
St. Louis, Missouri, to purchase said \$600,000 first
mortgage bonds of the [65] timber company, and
that so far as this defendant is advised the following
are the members of the syndicate who purchased said
bonds, with the amount of their purchases set after
their respective names:

- J. A. Prescott & Company.....\$200,000
- Little & Hays Investment Co..... 200,000
- Mr. Hays, brother and relative,
about.... .. 50,000
- Breckinridge Jones, President Mis-
sissippi Valley Trust Company 15,000

Mr. Davis, Vice-President Missis- sippi Valley Trust Company..	15,000
Eli Klotz, Director Mississippi Val- ley Trust Company.....	50,000
James Grover, Bond Officer Missis- sippi Valley Trust Company..	20,000
Mr. Broeck, Director, Treasurer Mississippi Valley Trust Com- pany....	10,000

That a large proportion of said \$600,000 first mortgage bonds of the timber company is now held by the members of said syndicate, as above set forth and that all of said parties had knowledge and notice that the proceeds of the sale of said bonds should be applied to the purposes hereinbefore set forth. That the complainants in this section are acting in the capacity of trustees and represent the holders of said bonds and have and can have no higher rights than the bondholders whom they represent and such notice to the bondholders constituted notice to the complainants.

7.

That the proceeds of the sale of the \$600,000 first mortgage bonds of the timber company were actually expended as follows:

(1) In the payment of the \$150,000 outstanding first mortgage notes of the timber company, which included the cancellation of the \$150,000 first mortgage notes of the railroad company, which had priority over the mortgages of the railroad company [66] and the timber company executed to the Mississippi Valley Trust Company.

(2) \$175,000 for the payment for timber lands acquired by the Washington-Oregon Timber Company from the Whitney Estate.

(3) About \$100,000, as this defendant believes and charges to be the fact, in building and in buying additional logging equipment for the Oregon-Washington Timber Company.

That at the time of the issuance and sale of said \$600,000 first mortgage bonds of the timber company the railroad company was without power under its charter to issue bonds for the purchase of lands for the timber company or for the building of camps and the procuring of logging equipment for the timber company, and this defendant avers and charges the fact to be that the proceeds of the sale of said bonds were paid out by the complainant, the Mississippi Valley Trust Company, upon the direction of the members of the said syndicate, some of whom were officers of said Trust Company, and were paid out by the Trust Company upon the direction of the present holders of the \$570,000 first mortgage bonds of the timber company, represented by the complainants in this action; and this defendant avers that the members of said syndicate hereinabove mentioned are now and were at the time of the commencement of this action the holders of more than \$300,000 of the \$570,000 first mortgage bonds of the timber company sought to be foreclosed in this action, and the complainants, as representatives of the present holders of such bonds, are estopped from sharing in the proceeds of the sale of the bonds of the railroad company or of the property of the railroad company,

to the extent of the \$175,000 paid out for timber lands and the \$100,000 paid out for the construction of camps and the purchase of logging equipment for the timber company, which sums were at their instance and to their knowledge diverted [67] from the proceeds of the sale of the \$600,000 first mortgage bonds of the timber company, and were diverted for the sole and exclusive use and benefit of the Oregon-Washington Timber Company. And this defendant avers that none of the present holders of the \$570,000 first mortgage bonds of the timber company ought in equity to be permitted to share either in the proceeds of the sale of the bonds of the railroad company or in the proceeds of the sale of the property of the railroad company, should such a sale be made under the decree of this Court.

8.

That the members of the syndicate above mentioned, whom this defendant avers to be the present holders of more than \$300,000 of the first mortgage bonds of the timber company, acquired, as a part of the consideration for the purchase of the \$600,000 first mortgage bonds of the timber company, practically all of the stock of the railroad company, amounting to 9993 shares of the par value of \$999,300.

9.

That on or about the 16th of February, 1911, the Blazier Timber Company was incorporated under the laws of the State of Oregon, with a capital stock of \$200,000. That between the 3d and the 18th day of March, 1911, the stockholders and board of directors

of the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company authorized the execution by the three companies of a series of joint collateral trust notes, to be known as "Series A" and to consist of notes aggregating the principal sum of \$100,000; and authorized the execution by the three companies of a series of joint collateral notes to be known as "Series B" and to consist of notes aggregating the principal sum of \$150,000. That these notes were [68] described as "First Mortgage and Collateral Notes, Series A" and "Series B," respectively, and were secured:

First. By an indenture dated January 30th, 1911, executed by the two timber companies and the railroad company to the Mississippi Valley Trust Company, by which the Blazier Timber Company conveyed and mortgaged to the trustee all of its property of every kind then owned or thereafter acquired by it, and the railroad company assigned to the trustee the \$400,000 second mortgage bonds of the Oregon-Washington Timber Company, together with the \$400,000 first mortgage bonds of the railroad company deposited as collateral security for the payment of the second mortgage bonds of said timber company. That the proceeds of the \$100,000 "Series A" notes were to be used for the purchase by the Blazier Timber Company of the tract of land known as the "Sibley Tract," and the entire \$100,000 of the proceeds of said "Series A" notes, with the exception of \$12,783, was used for that purpose.

That the \$150,000 "Series B" notes represented

the amount to be paid to the syndicate above named, the present holders of \$300,000 of the first mortgage bonds of the Oregon-Washington Timber Company, represented by the complainants in this action, for the stock of the railroad company, which had been sold, as above stated with the first mortgage bonds of said timber company; and said \$150,000 Series B'' notes were delivered by the three companies to the said syndicate above named, in payment of the purchase price of the stock of the railroad company which was held and owned by the members of the syndicate. That the stock of the railroad company was not, however, sold to either of the timber companies nor to the railroad company, but was sold to J. E. Blazier. That the purchase price for said stock was paid by the three companies in the form of notes aggregating \$150,000, described as "Series B'' notes, and at the time of the meeting of the stockholders of the railroad company authorizing the issuance [69] of such notes in the sum of \$150,000 for such purpose, all of the stock of the railroad company was held and voted by the members of said syndicate, the present holders of the bonds sought to be foreclosed in this action. That until the 3d of May, 1911, a majority of the directors of said railroad company was composed of members of said syndicate, and that the said Hays was president of said railroad company and the said Klotz was secretary thereof at such time.

That such stock of the railroad company was delivered to one J. E. Blazier and ever since has been held and used by his as his individual property.

That the said "Series B" notes for \$150,000 were subsequently paid to the members of said syndicate by the railroad company and by the Oregon-Washington Timber Company, or practically the entire sum, as this defendant believes and charges the fact to be.

That the payment of the \$150,000 by the railroad company and the Oregon-Washington Timber Company to the said bondholders constituted an unlawful diversion of the funds of the timber companies which at the time of said payment were dominated and controlled by the members of said syndicate; that said \$150,000 so paid constitutes an off-set against the holders of the \$570,000 of bonds represented by the complaints in this action.

That the payment of said \$150,000 is in equity a payment of the bonds being sued upon in this action to the extent of said \$150,000, and that the complainants are estopped to enforce their said claims to the extent of \$150,000 which sum they have already received from the said railroad company and the said Oregon-Washington Timber Company.

10.

That in order to have a complete accounting for said [70] \$150,000 so unlawfully diverted from the Washington Northern Railroad Company and the Oregon-Washington Timber Company to the members of said syndicate, it is necessary, as this defendant is informed and believes, to have the members of said syndicate brought into and made parties defendant in this action, and this defendant prays the Court that an order be entered by this

Court bringing in the members of said syndicate and making them parties to this suit by appropriate action. Or, in the event that said members of said syndicate are beyond the jurisdiction of this Court, that they be denied the right to participate in the proceeds of the sale of the properties of the Washington Northern Railroad Company and of the Oregon-Washington Timber Company.

WHEREFORE, this defendant prays for an order bringing in and making parties to this action the members of the syndicate in this answer named, and for a decree denying to the complainants the relief prayed for in their amended bill of complaint. Or, in the event that such relief prayed for by the complainants be not denied in toto, that such of the bondholders represented by the complainants as had knowledge of and participated in the unlawful diversion of the proceeds of the sale of the \$600,000 first mortgage bonds of the Washington Northern Railroad Company be estopped from participating in the proceeds of the sale of the bonds of the railroad company or the properties of the railroad company to the extent of such diversion, as set forth in this answer; and that the sum of \$150,000, the amount of the proceeds of the "Series B" notes be off-set against the bonds owned by the members of the syndicate above named, represented by the complainants in this action; and that it be decreed that the complainants and [71] the bondholders and the Oregon Northern Railroad Company have no interest in any portion of the property acquired by the Blazier Timber Company from the Weist

Logging Company, and that, after the allowance of the off-set and estoppel in this answer mentioned, the proceeds of the sale of the property of the railroad company, if it be sold under the order of this Court, be distributed to this defendant as the holder of \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company in the proportion that the \$400,000 of bonds of this defendant bears to the amount of other outstanding first mortgage bonds of the railroad company that may be established as a valid first lien upon the property of the railroad company. And for such other relief as to this Court may seem meet and equitable.

E. S. McCORD and
J. A. KERR & McCORD,
KERR & McCORD,

Attorneys for Defendant William W. Crawford.

(Verification.)

(Acceptance of service.)

(Filed Jan. 3, 1914.) [72]

[Title of Court and Cause.]

Cross-complaint.

To the Honorable Judges of the Above-entitled Court:

Your orator, William W. Crawford, pursuant to leave of Court first had and obtained, files this, his cross-complaint in the above-entitled action, and for cause of suit [72] against the defendants herein named avers:

I.

That the cross-complainant, William W. Crawford, is now, and at all the times hereinafter mentioned has been, a citizen and resident of the State of Illinois, residing in the city of Chicago therein.

II.

That the Washington Northern Railroad Company is now and at the times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Oregon and is now and at all the times hereinafter mentioned has been a citizen of the State of Oregon.

III.

That the defendant Oregon-Washington Timber Company is now and at all the times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Oregon and is now and at all the times hereinafter mentioned has been a citizen of the State of Oregon.

IV.

That the Blazier Timber Company is now and at all the times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Oregon and is now and at all the times hereinafter mentioned has been a citizen of the State of Oregon.

V.

That the Union Trust Company is now and at all the times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Michigan and is now and at all the times hereinafter mentioned has been a

citizen of the State of Michigan. [74]

VI.

That the Mississippi Valley Trust Company is now and at all the times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Missouri, and is now and at all the times hereinafter mentioned has been a citizen of the State of Missouri.

VII.

That Frank P. Hays and William C. Little, copartners doing business as Little & Hays, —, Hays, a brother of Frank P. Hays, Breckinridge Jones, Eli Klotz, James Grover, *James Grover*, James E. Broeck, J. E. Blazier, E. J. Blazier, and John E. Prescott and D. L. Robinson, copartners doing business as John A. Prescott & Company, are now and at all the times hereinafter mentioned have been citizens of the State of Missouri and residents therein.

VIII.

That this is a suit between citizens and residents of different States, in which the amount in controversy exceeds, exclusive of interest and costs, the sum of \$3,000. That it is also a suit for the foreclosure of liens upon certain property situated in the Western District of Washington and within the Southern Division thereof, which property consists in part of real property, in part of personal property, and in part of easements, servitudes and rights of way on real property, all situate within said district.

IX.

That on the first day of April, A. D. 1912, the said Washington Northern Railroad Company, the Ore-

gon-Washington Timber Company, and the Blazier Timber Company, executed, acknowledged and delivered to this cross-complainant, William W. Crawford, [75] Trustee, a certain mortgage deed of trust, pursuant to a resolution duly and unanimously adopted by all of the stockholders and by the board of trustees of each of said three respective companies at meetings thereof respectively and legally held, wherein and whereby the said Washington Northern Railroad Company, the said Oregon-Washington Timber Company and the said Blazier Timber Company conveyed to the said William W. Crawford, trustee, cross-complainant herein, the following described property, situate in the county of Skamania, State of Washington and within the Southern Division of the Western District of Washington, to wit:

(a) BY THE WASHINGTON NORTHERN RAILROAD COMPANY.

All of the estate, right, title, interest and property of the Railroad Company in and to that certain logging railroad extending from Prindles's Landing in Section 12, Township 1 North, Range 5 East of the Willamette Meridian, and running thence through and over Sections 12, 1, 2, 11, 3 and 2 in said Township 1 North, Range 5 East of said Meridian, and thence through and over Sections 35, 26, and 25, in Township 2 North, Range 5 East of said Meridian, and thence through and over Sections 30 and 19, in Township 2 North, Range 6 East of said Meridian, and thence through and over Sections 24 and 13, in Township 2 North, Range 5 East of said Meridian,

all in Skamania County, in the State of Washington; and all extensions and branches of and additions to said line of railroad, whether in said Skamania County or elsewhere in the State of Washington.

It is understood and hereby declared that the foregoing includes the following real estate and rights of way now owned by the Railroad Company as a part of its said railroad:

All those certain rights of way leases and rights of way in fee in and across certain lands in said Skamania County in the State of Washington, and more specifically described as follows:

Twenty-year lease from April 12, 1909, for railroad across East half Northeast quarter Section 25, Township 2 North, Range 5 East, Willamette Meridian.

Fifteen-year lease from May 16, 1908, for railroad across East half Southeast quarter Section 3, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen-year lease from May 16, 1908, for railroad across Southwest quarter Section 2, Township 1 North, Range 5 East, Willamette Meridian, and Southwest quarter of Northwest quarter said Section 2.

Fifteen-year lease from April 16, 1908, for railroad across Southeast quarter of Southeast quarter Section 23, Township 2 North, Range 5 East.

Right of way in fee 100 feet wide across West half Northwest quarter Section 25, Township 2 North, Range 5 East, Willamette Meridian. [76]

Railroad right of way over Lot 2, Southeast quarter of Northwest quarter and South half of North-

east quarter Section 19, Township 2 North, Range 6 East, Willamette Meridian.

Fifteen-year lease from June 10, 1910, for railroad across East half Northeast quarter Section 3, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen-year lease from June 9, 1909, for railroad across Southeast quarter Section 26, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from June 13, 1910, for railroad across Southeast quarter Section 26, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from June 3, 1910, for railroad across Northwest quarter Northwest quarter Section 2, Township 1 North, Range 5 East; Southeast quarter Southwest quarter and Northwest quarter Southeast quarter and Southwest quarter Northeast quarter Section 35, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from June 6, 1910, for railroad across East half Northwest quarter Section 35, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from June 3, 1910, for railroad across Northeast quarter Southwest quarter Section 35, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from May 31, 1910, for railroad across Southeast quarter Section 2, Township 1 North, Range 5 East, W. M.

Fifteen-year lease from May 31, 1910, for railroad across all shore and tide lands in front of Lots 1 and 2, Section 12, Township 1 North, Range 5 East, W. M., and a certain portion of Lot 3 of said section, in all a frontage of 71.50 chains along the meander line.

Fifteen-year lease from June 3, 1910, for railroad across North half Northwest quarter Section 11, Township 1 North, Range 5 East, W. M.

Fifteen-year lease from May 31, 1910, for railroad across south half Southwest quarter, Southwest quarter, Southeast quarter, and Lot 1, in Section 1, and Lots 1, 2, 3, and 4, in Section 12, Township 1, Range 5 East, W. M.

Fifteen-year lease from May 31, 1910, for railroad across Northeast quarter Northwest quarter, Northwest quarter Northeast quarter Section 11, Southwest quarter Southwest quarter Section 1 and Lot 1, in Section 12, Township 1 North, Range 5 East, W. M.

Fifteen-year lease from June 3, 1910, for railroad across Northwest quarter Northwest quarter Section 2, Township 1 North, Range 5 East; Southeast quarter Southwest quarter and Northwest quarter Southeast quarter and Southwest quarter Northeast quarter Section 35, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from June 2, 1910, for railroad across Northeast quarter Northwest quarter Section 2, Township 1 North, Range 5 East, W. M.

Fifteen-year lease from June 6, 1910, for railroad across West half Northeast quarter Section 23, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from May 31st, 1910, for railroad across Northeast quarter, Section 26, Township 2 North, Range 5 East, W. M.

Fifty-year lease from June 2, 1910, for railroad across Southwest quarter Northeast quarter, Northwest quarter Southeast quarter, North half South-

west quarter, Section 25, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from June 25, 1908, for railroad across Northwest quarter Northeast quarter Section 35, Township 2 North, Range 5 East, W. M. [77]

Fifteen-year lease from May 16, 1908, for railroad across Southwest quarter Northwest quarter and Southwest quarter Section 2, Township 1 North, Range 5 East, W. M.

Right of way in fee 100 feet wide across West half Northeast quarter and East half Northwest quarter Section 23, Township 2 North, Range 5 East, W. M.

Railroad right of way across Lot 2, Southeast quarter Northwest quarter and South half Northeast quarter Section 19, Township 2 North, Range 6 East, W. M.

Twenty-year lease for railroad across East half Northeast quarter Section 25, Township 2 North, Range 5 East, W. M.

Fifteen-year lease from May 27, 1911, right of way across Northwest quarter Section 17, Township 2 North, Range 6 East, W. M.

All of which leases and grants of rights of way have been filed for record and are duly recorded in the office of the County Auditor of said Skamania County, Washington.

Also that certain tract of land beginning at Northwest corner Northeast quarter Section 35; thence East along the section line between Sections 26 and 35, 10 chains; thence West parallel with center line of Section 35, 10 chains; thence West parallel with the North line of Section 35, 10 chains; thence North

following subdivision line 10 chains to beginning, all in Township No. 2 North, Range 5 East of the Willamette Meridian, in said Skamania County, Washington.

All and singular the rights of way; roadbed and bridges; easements; railway tracks; spurs; side-tracks; switches; sidings; terminals; shops; grounds; depots, stations; power-houses and power machinery; locomotives, tenders, cars, and other rolling-stock and equipment; furniture; tools; and all implements, appendages and appurtenances to or used in connection with said railroad in any manner whatsoever; and all property wheresoever situate now belonging to or in the possession of the Railroad Company, or which shall hereafter be by it acquired, constructed or provided for use as a part of or for use upon or in connection with or by way of additions to or extensions or equipment of said railroad; together with all the reversions, remainders, revenues, rents, income, tolls, fares and profits thereof.

All accounts due or to become due, bonds, mortgages, notes, liens, leases, easements, agreements, maps, surveys, licenses, immunities, rights, privileges, franchises, and grants appertaining to or owned, held, enjoyed or at any time hereafter acquired by the Railroad Company in connection with its said Railroad.

Any and all contracts and agreements with the Timber Company, the Brazier Company, and with any other corporation or corporations, associations, partnerships and individuals for the hauling of logs, cordwood, and other timber products, and of supplies,

materials, goods and merchandise of any and every kind and character, whether such contracts and agreements be now owned or made by the Railroad Company or be at any time hereafter made or acquired by it, together with all rights, interests, claims, moneys, rentals or tolls conferred or granted by or acquired under, or due or to become due upon any or all of such contracts or agreements.

All property of every name and nature now owned or hereafter acquired, or at any time, or from time to time hereafter, by deliverey or by writing of any kind for the purposes hereof, conveyed, pledged, assigned, or transferred by the Railroad [78] Company or any one in its behalf to the trustee, who is hereby authorized at any time and from time to time to receive any property as and for additional security, and also when and as hereinafter provided as substituted security, for the payment of the notes issued hereunder, and according to the terms hereof to hold and to apply any and all such property.

All of the railways, rights of way, tracks, lines, extensions, additions, spurs, sidings, and any and all other property, real, personal and mixed, of every kind and description now owned by the Railroad Company or which, at any time, and from time to time hereafter, shall be purchased, acquired, constructed or provided for use upon or in connection with or as additions to or branches or extensions of the railroad and property now owned by the Railroad Company or otherwise under its present powers or under powers or privileges that may hereafter be conferred upon it; and any and all the reversions,

remainders, revenues, rents, profits, tolls or other income of such railroad and of any and all additions to and branches and extensions thereof; together with all and singular the equipment, rights, privileges, immunities and franchises now or hereafter appurtenant thereto or used in connection with the said railway of the Railroad Company or any addition to or branch or extension thereof, whether now constructed or owned or hereafter constructed or acquired by the Railroad Company.

It is the true intent and agreement of the parties hereto that this indenture is to convey all of the property, real, personal and mixed of every kind and wheresoever situated, and all appendages and appurtenances thereto, and all of the equities of redemption, reversions, interests, liens, franchises, rights, privileges, immunities, claims and demands as well in equity as in law, now owned, possessed or enjoyed by the Railroad Company, notwithstanding that the same is not now particularly set forth in this indenture and is not hereinabove specifically described.

It is understood and hereby expressly declared: That the property of the Railroad Company is now subject to the lien of that certain mortgage deed of trust dated June 4, A. D. 1910, executed by the Railroad Company to the Mississippi Valley Trust Company, trustee (a Missouri corporation having its principal office and place of business in the City of St. Louis, in the State of Missouri), and recorded in the office of the County Auditor of Skamania County, Washington, in Book "I" of Mortgages on pages 339 to 356, both inclusive, in order to secure

the payment of the principal of and interest on that certain issue of first mortgage 6% gold bonds of the Railroad Company, being 1000 bonds, numbered from 1 to 1000, both inclusive, and of the denomination of \$1,000 each, dated as of June 4, A. D. 1910, and due May 1, A. D. 1928.

That 600 of the aforesaid bonds, being bonds numbered from 1 to 600, both inclusive, have been pledged or assigned as collateral security for that certain issue of first mortgage 6% gold bonds of the Timber Company, aggregating the principal sum of \$600,000, issued under and secured by a mortgage deed of trust executed by the Timber Company to the said Mississippi Valley Trust Company, Trustee, under date of June 4, A. D. 1910, which said 600 bonds of the Railroad Company, now held by the said Mississippi Valley Trust Company, trustee, as collateral security as aforesaid, are, by the terms of said mortgage deed of trust of the Timber Company, required to be delivered uncanceled to the Railroad Company upon its demand from time to time, in like amounts and in the order of their corresponding numbers, as the said bonds of the Timber Company are paid. [79]

That 400 of the aforesaid bonds of the Railroad Company, being bonds numbered 601 to 1000, both inclusive, have been pledged or assigned as collateral security for that certain issue of second mortgage 6% bonds of the Timber Company, aggregating the principal sum of \$400,000, issued under and secured by a second mortgage deed of trust, executed by the Timber Company to the said Mississippi Valley Trust Company, trustee, under date of June 4, A. D.

1910; which said 400 bonds of the Railroad Company now held by the said Mississippi Valley Trust Company as collateral security as aforesaid, are by the terms of the said second mortgage deed of trust of the Timber Company, required to be delivered uncanceled to the Railroad Company upon its demand from time to time, in like amounts and in the order of their corresponding numbers, as the said second mortgage bonds of the Timber Company are paid;

That the said 400,000 second mortgage bonds of Timber Company were duly issued to and the Railroad Company is now the lawful owner of the same, and is authorized and empowered to use, negotiate, assign, and pledge the same for its corporate purposes;

That the Railroad Company is duly authorized and empowered to issue, use, negotiate, pledge or assign, for its corporate purposes, its said bonds as they are surrendered and delivered to it as aforesaid.

Now, therefore, for the consideration aforesaid, and as a part of the security furnished by the Railroad Company for the payment of the principal of and interest on the notes issued hereunder and secured hereby, the Railroad Company does hereby further sell, assign, pledge, transfer, and set over to the trustee (a) said \$400,000 second mortgage bonds of the Timber Company; (b) the said \$1,000,000 first mortgage bonds of the Railroad Company as they are from time to time released and delivered, or releaseable and deliverable by the said Mississippi Valley Trust Company under the terms and provisions of the said first and second mortgage deeds of

trust, respectively, of the Timber Company.

(b) BY THE OREGON-WASHINGTON TIMBER COMPANY:

All of the following described lands and real property situated in Skamania County in the State of Washington:

The East half of the Northeast quarter of Section 25; the North half of the North half of Section 24; the East half of the Northeast quarter and the North half of the Southeast quarter of Section 23; the East half and the East half of the West half and the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 14; the whole of Section 13; the East half of Section 11; the Southeast quarter and the Southwest quarter of the Northeast quarter and the Northeast quarter of the Northwest quarter and the West half of the Northwest quarter and the Northwest quarter of the Southwest quarter, and the South half of the Southwest quarter of Section 12; the Southeast quarter of Section 2; and the whole of Section 1; all in Township 2 North, Range 5 East, Willamette Meridian. [80]

The Northwest quarter of Section 30; the Southwest quarter and the North half of the North half and the South half of the North half of Section 19; the whole of Section 18; the Southeast quarter of the Southeast quarter and the Southwest quarter, and the Southwest quarter of the Northwest quarter of Section 7; the Northwest quarter of Section 8; the Southwest quarter of the Southeast quarter and the Southwest quarter, and the Southeast quarter of the

Northwest quarter, and the West half of the Northwest quarter of Section 6; all in Township 2 North, Range 6 East, Willamette Meridian.

The North half of the Northeast quarter, the South half of the Southeast quarter of Section 34; the whole of Section 35; the South half and the Northeast quarter of Section 36; the South half of Section 25; the South half and the Northeast quarter of Section 36; the Southwest quarter, and the Southwest quarter of the Southeast quarter, and the Southwest quarter of the Northwest quarter of Section 26; the Northwest quarter and the North half of the Northeast quarter of Section 24; the Southwest quarter of the Southeast quarter of Section 13; all in Township 3 North, Range 5 East, Willamette Meridian.

The whole of Section 31; the whole of Section 32; the whole of Section 28; the Northwest quarter of Section 29; the Southwest quarter of Section 30; the Southwest quarter of Section 20; the Southeast quarter and the West half of Section 19; the whole of Section 18; the Southwest quarter of Section 17; the Southwest quarter of Section 8, North half and the North half of the South half of Section 31; all in Township 3 North, Range 6 East, Willamette Meridian.

The lands above described embrace in the aggregate about 10,800 acres, upon which there is now standing timber aggregating about three hundred and ninety-seven million feet, as shown by cruises of standard cruisers.

All timber and timber rights, rights of way, easements, railroads, log or logging roads, buildings,

workshops, mills plants, office and store buildings, fixtures, machinery, engines, boilers, rolling stock, teams, logging equipment, now or hereafter located on the real estate hereinabove described or any portion thereof or elsewhere and now owned or hereafter acquired by the Timber Company, together with all the appendages, appurtenances, reversions, remainders, revenues, rents, income, tolls, fares and profits thereof.

And it is expressly agreed that any and all personal property covered by the foregoing description shall be considered as fixtures and appurtenances to and constituting part of the real property of the Timber Company.

All accounts due or to become due, deeds, books, records, bonds, mortgages, notes, liens, leases, easements, agreements, maps, surveys, licenses, immunities, rights, privileges, franchises and grants and all other property and property rights of whatsoever character or nature, real, personal or mixed, and wheresoever situated, now owned, held, possessed or enjoyed by the Timber Company, or any time hereafter acquired by it, and any and all rights or interests therein or thereto; and the reversions, remainders, revenues, rents, income, issues and profits thereof. [81]

Any and all contracts and agreements with the Railroad Company, the Blazier Company and with any other corporation or corporations, associations, partnerships, and individuals in connection with the real estate, timber and timber rights now owned or made by the Timber Company or at any time here-

after, made or acquired by it; together with all moneys, rights, liens, interests, claims, issues, profits, revenues or tolls conferred or granted by or acquired under or due or to become due upon any or all of such contracts or agreements.

All the estate, right, title and interest, property, possession, leases, privileges, franchises, contracts, claims and demands whatsoever as well in equity as at law of the Timber Company and of every part thereof, whether now owned or hereafter acquired by it; and including all property of every name and nature which may at any time and from time to time hereafter by delivery or by writing of any kind for the purposes hereof, be conveyed, pledged, assigned or transferred by the Timber Company or anyone in its behalf to the Trustee, who is hereby authorized at any and all times and from time to time to receive any property as and for additional security and also when and as herein provided as substituted security, for the payment of the notes issued hereunder, and according to the terms hereof to hold and to apply any and all such property.

It is the true intent and agreement of the parties hereto that this indenture is to convey all of the property, real, personal and mixed, of every kind and wheresoever situate, and all appendages and appurtenances thereto, and all of the equities of redemption, reversions, interests, franchises, rights, privileges, immunities, claims and demands, as well in equity as at law, now owned, possessed or enjoyed and which may hereafter be in anywise acquired, owned, possessed or enjoyed by the Timber Company,

notwithstanding that the same is not now particularly set forth in this indenture and is not hereinabove specifically described.

It is understood and hereby expressly declared that the property of the Timber Company is now subject to the lien of two mortgage deeds of trust, viz.:

(a) A first mortgage deed of trust dated June 4, A. D. 1910, executed by the Timber Company to the Mississippi Valley Trust Company, hereinabove mentioned (and recorded in the office of the County Auditor of Skamania County, Washington, in Book "I" of Mortgages, at page 296), to secure the payment of the principal of and interest on that certain issue of 600 first mortgage 6% gold bonds of the Timber Company numbered from 1 to 600, both inclusive, of the denomination of \$1000 each, dated June 4, 1910, and maturing serially \$30,000 in amount on May 1 and November 1 in each of the years 1912 to 1921, both inclusive; and by and under which mortgage deed of trust the first mortgage bonds of the Railroad Company to the amount of \$600,000 face value (being bonds numbered 1 to 600) have been pledged or assigned to the said Mississippi Valley Trust Company, Trustee, as further and collateral security for said first mortgage bonds of the Timber Company, but which said bonds of the Railroad Company are to be surrendered to it from time to time as the said first mortgage bonds of the Timber Company are paid, as hereinabove more fully stated. [82]

(b) A second mortgage deed of trust, dated June 4, A. D. 1910, executed by the Timber Company to the said Mississippi Valley Trust Company (and re-

corded in the office of the County Auditor of Skamania County, Washington, in Book "I" of Mortgages at page 316), to secure the payment of the principal of and interest on that certain issue of 400 second mortgage 6% gold bonds of the Timber Company, numbered from 1 to 400, both inclusive of the denomination of \$1000 each, dated June 4, 1910, and maturing serially \$30,000 in amount on May 1 and November 1, in each of the years 1922 to 1928, both inclusive; and by and under which mortgage deed of trust the first mortgage bonds of the Railroad Company to the aggregate amount of \$400,000 face value (being bonds numbered 601-1000) have been pledged or assigned to the said Mississippi Valley Trust Company, Trustee, as further and collateral security for said second mortgage bonds of the Timber Company, but which said bonds of the Railroad Company are to be surrendered to it from time to time as the said second mortgage bonds of the Timber Company are paid as hereinabove more fully stated.

All of said first mortgage bonds of the Timber Company have been sold and issued and are now outstanding; and all of the said second mortgage bonds of the Timber Company have been duly sold and issued and the Railroad Company is now the lawful owner thereof.

NOW, THEREFORE, for the consideration aforesaid and as a part of the security furnished by the Timber Company for the payment of the principal of and interest on the notes issued hereunder and secured hereby, the Timber Company does hereby

further sell, assign, pledge, transfer and set over to the Trustee all of its right, title and interest in, to and under its aforesaid \$400,000 second mortgage bonds, and also said bonds of the Railroad Company as they are from time to time released and delivered, or releaseable and deliverable, under the terms and provisions of said first and second mortgage deeds of trust respectively, of the Timber Company.

(c) BY THE BLAZIER TIMBER COMPANY:

All of the following described lands and real property situated in Skamania County, in the State of Washington:

Lot 1, the East half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 7, and the Southwest quarter of Section 8 in Township 2 North, Range 6 East, W. M.

North half of Southwest quarter, Southeast quarter of Southwest quarter Section 9, Township 2 North, Range 6 East, W. M.

Northwest quarter Section 17, Township 2 North, Range 6, East, W. M.

Northeast quarter and West half Southeast quarter 9, Township 2 North, Range 6 East, W. M.

Southeast quarter of Northeast quarter, Northeast quarter of Southeast quarter, West half of Southeast quarter Section 7, Township 2 North, Range 6 East, W. M.

All timber and railroad right-of-way for twenty years on Northeast quarter Section 17, Township 2 North, Range 6 East W. M.

Southwest quarter Section 17, Township 2 North, Range 6 East, W. M. [83]

All timber on Northeast quarter, North half Northwest quarter, Southeast quarter Northwest quarter, and South half Section 16, Township 2 North, Range 6 East, W. M.

Upon the lands above described there is now standing timber aggregating about seventy-nine million feet, as shown by cruises of standard cruisers.

All timber and timber rights, rights of way, easements, railroads, logs, logging roads, buildings, workshops, mills, plants, office and store buildings, fixtures, machinery, engines, boilers, rolling stock, teams, logging equipment, now or hereafter located on the real estate hereinabove described or any portion thereof or elsewhere and now owned or hereafter acquired by the Blazier Company, together with all the appendages, appurtenances, reversions, remainders, revenues, rents, income, tolls, fares and profits thereof.

And it is expressly agreed that any and all personal property covered by the foregoing description shall be considered as fixtures and appurtenances to and constituting part of the real property of the Blazier Company.

All accounts due or to become due, deeds, bonds, books, records, mortgages, notes, liens, leases, easements, agreements, maps, surveys, licenses, immunities, rights, privileges, franchises and grants, and all other property and property rights of whatsoever character or nature, real, personal or mixed and wheresoever situated, now owned, held, possessed or enjoyed by the Blazier Company, or at any time hereafter acquired by it, and any and all rights or inter-

ests therein or thereto; and the reversions, remainders, revenues, rents, income, issues and profits thereof.

Any and all contracts and agreements with the Railroad Company, the Timber Company, and with any other corporation or corporations, associations, partnerships, and individuals in connection with the real estate, timber and timber rights now owned or made by the Blazier Company, or at any time hereafter made or acquired by it; together with all moneys, rights, interests, claims, liens, issues, profits, revenues or tolls conferred or granted by or acquired under or due or to become due upon any or all of such contracts or agreements.

All the estate, right, title and interest, possession, leases, privileges, franchises, contracts, claims and demands whatsoever as well in equity as at law of the Blazier Company and of every part thereof, whether now owned or hereafter acquired by it, and including all property of every name and nature which may at any time and from time to time hereafter by delivery or by writing of an kind for the purposes hereof be conveyed, pledged, assigned or transferred by the Blazier Company or any one in its behalf to the Trustee, who is hereby authorized at any and all times and from time to time to receive any property as and for additional security, and also when and as herein provided as substituted security, for the payment of the notes issued hereunder, and according to the terms hereof to hold and to apply any and all such property.

It is the true intent and agreement of the parties

hereto that this indenture is to convey all of the property, real, personal and mixed, of every kind and wheresoever situate, and all appendages and appurtenances thereto, and all of the equities of redemption, reversions, interests, franchises, rights, privileges, immunities, claims, and demands, as well in equity as at law, now owned, possessed or enjoyed, and which may hereafter [84] be in any wise acquired, owned, possessed or enjoyed by the Blazier Company, notwithstanding that the same is not now particularly set forth in this indenture and is not hereinabove specifically described.

That in and by said mortgage there was also conveyed and transferred to the said William W. Crawford, trustee, in addition to the above-described property, all other property, real, personal and mixed, of every nature and kind whatsoever, which the said three several companies then owned or might thereafter acquire; and it was specifically provided therein that all future acquired property should be deemed to be a part of the security transferred by the said mortgage and as fully embraced within the provisions thereof and subject to the lien created thereby as if the said future acquired property had been owned by the three several companies, or either of them, and had been at the time of the execution of said mortgage deed of trust, and had been specifically described and mentioned in said mortgage deed of trust.

That the said mortgage deed of trust was regularly executed and acknowledged, and being entitled to record was duly recorded on the 9th day of April,

A. D. 1912, in the office of the auditor of Skamania County, Washington, in book "L" at page 68 thereof of the Mortgage Records of Skamania County, Washington, which said mortgage was also filed for record as a chattel mortgage on the 9th day of April, A. D. 1912, in the office of the auditor of Skamania County, Washington in book "O" of Chattel Mortgages at page 344 thereof, of the Chattel Mortgage Records of said Skamania County.

Said mortgage is hereby by reference incorporated in this cross-complaint, and your orator prays leave at any and all times to present said mortgage, or a true copy thereof, for consideration by the Court in further elaboration of your [85] orator's cause of suit thereunder; and said mortgage by reference is hereby made a part of this cross-complaint to the same extent as though the same had been specifically and fully set forth herein.

X.

That the said mortgage described in the preceding paragraph, No. IX of this cross-complaint, was executed to secure an issue of notes in the principal sum of \$425,000, known as "First and General Lien 6% Gold Notes" numbered from 1 to 425, inclusive, of the denomination of \$1000 each, and maturing at different dates as provided in said mortgage deed of trust; and as contemplated in and by said mortgage deed of trust, there were duly issued four hundred twenty-five First and General Lien 6% Gold Notes, numbered from 1 to 425 consecutively, which bonds were substantially in the following form, duly signed by the President and Secretary respectively of the

Washington Northern Railroad Company, the Oregon-Washington Timber Company, the Blazier Timber Company, and by William W. Crawford, trustee, to wit:

UNITED STATES OF AMERICA.

State of Oregon.

Washington Northern Railroad Company.

Oregon-Washington Timber Company.

Blazier Timber Company.

First and General Lien Six Per Cent Gold Note.

No. ————— \$1000.

Washington Northern Railroad Company, Oregon-Washington Timber Company and Blazier Timber Company (hereinafter referred to as the "Companies"), all corporations organized under the laws of the State of Oregon and qualified under the laws of the State of Washington, hereby acknowledge themselves to owe and for value received promise to pay to bearer, or, if registered, to the registered owner hereof the principal sum of ONE THOUSAND DOLLARS on the 1st day of March, A. D. 19—, with interest on said sum from the date hereof until paid at the rate of SIX PER CENT per annum, payable semi-annually on the first days of March and September in each year, as evidenced by and upon the presentation [86] and surrender of the attached interest coupons as they severally mature. Both the interest on and principal of this note are payable in gold coin of the United States of America of or equal to the present standard of weight and fineness, without deduction for any tax or taxes which the Companies or any of them may be required

to pay thereon or retain therefrom under any present or future law of the United States, or of any state, county, municipality or taxing district or authority therein, at the banking house of the Assets Realization Company in the City of Chicago, Cook County, Illinois.

This note is one of a series of 425 notes, numbered consecutively from 1 to 425, both inclusive, of like date, amount and tenor (save as to maturities) issued by the Companies under and in pursuance of and all equally secured by

(a) A certain mortgage trust deed of indenture, dated March 1, A. D. 1912, duly executed by the Companies to William W. Crawford, Trustee, of the City of Chicago, Illinois, conveying, mortgaging, warranting and pledging all of the property of every nature and description, equities of redemption, reversionary interests, contracts, rights and franchises now owned or hereafter acquired by each of the Companies, as set forth in said indenture, and subject to the liens therein mentioned.

(b) A certain collateral trust agreement, dated March 1, A. D. 1912, by and between J. E. Blazier, Eugene Blazier and E. J. Blazier, of the City of Portland, Oregon, and the said William W. Crawford, Trustee, assigning and pledging certain shares of the capital stock of each of the Companies and certain other rights and interests therein mentioned,

To which mortgage deed of trust and collateral trust agreement reference is hereby made for a description of the said property, equities, interests, contracts, rights and stock, the nature and extent of the

security thereby created, the rights and remedies of the holders of said notes under the said indenture and agreement and the provisions for accelerating the maturity of said notes in case of default in the payment of the interest thereon or for other breach of covenant by the Companies under said indenture—all with the same force and effect as if the provisions of said indenture and collateral trust agreement were herein fully set forth.

This note shall pass by delivery unless registered in the holder's name on the books of the Companies at the office of their bond registrar, the said William W. Crawford, Trustee, or his successor in trust for the time being under said indenture, such registry being noted hereon by said registrar. After such registration no transfer hereof shall be valid unless made on such books by the registered owner or by the legal representative of such owner in person, or by duly authorized attorney, and similarly noted hereon; but the same may be discharged from registry by registry to bearer, and thereupon transferability by delivery shall be restored; but from time to time this note may again be registered or transferred to bearer as before. Such registration, however, shall not affect or restrain the negotiability of the interest coupons, which shall continue to be transferable by delivery merely.

This note is redeemable before maturity at the option of the Companies on any interest payment date upon payment by the Companies to the owner hereof, or to the said Assets Realization Company for the benefit of such owner, of the par thereof, together

with a premium of five (5) per centum and all interest then accrued hereon, upon thirty days' previous published notice, as is more fully stated in said indenture. In case of such prepayment, all interest upon the principal hereof shall forthwith cease and any and all obligations for such interest maturing thereafter shall become and shall be null and void.

[87]

This note shall not become obligatory for any purpose until it shall have been authenticated by the execution of the certificate hereon endorsed of the said William W. Crawford, Trustee, or of his successor in trust under the said indenture.

IN WITNESS WHEREOF, the said Washington Northern Railroad Company, Oregon-Washington Timber Company and Blazier Timber Company have respectively caused this note to be signed in their names by their Presidents and sealed with their corporate seals attested by their Secretaries, respectively, and each of the interest coupons hereto attached to be executed by the lithographed facsimile signatures of their respective Treasurers the 1st day of March, A. D. 1912.

WASHINGTON NORTHERN RAILROAD
COMPANY.

By _____,
President.

[Seal] Attest: _____,
Secretary.

OREGON-WASHINGTON TIMBER COMPANY.

By _____,
President.

[Seal] Attest: _____,
Secretary.

BLAZIER TIMBER COMPANY.

By _____,
President.

[Seal] Attest: _____,
Secretary.

(Form of Trustee's Certificate.)

This is to certify that the within Note is one of the series of four hundred and twenty-five notes numbered one to four hundred and twenty-five issued under and described in the within mentioned mortgage trust deed of indenture.

_____,
Trustee. [88]

(Form of Guaranty.)

For value received I hereby guarantee the payment of the within note and of each of the interest coupons thereto attached according to the tenor and terms thereof.

(Registration.)

Date of Registry.	In Whose Name Registered.	By Whom Registered.

(Form of Coupon.)

No. _____.

\$30.00

On the first day of _____, A. D. _____, Washington Northern Railroad Company, Oregon-Washington Timber Company, and Blazier Timber Company, will pay to bearer at the banking house of the Assets Realization Company in the City of Chicago, Illinois, thirty (\$30.00) dollars, in United States gold coin of or equal to the present standard of weight and fineness without deduction for taxes, being six (6) months' interest then due on their First and General Lien Six Per Cent Gold Note, dated March 1, A. D. 1912, No. _____, unless such note shall previously have been called for redemption.

_____,
Treasurer Washington Northern Railroad Company.

_____,
Treasurer Oregon-Washington Timber Company.

_____,
Treasurer Blazier Timber Company.

That attached to each of said notes was a coupon which entitled the bearer to the payment of \$30.00 interest on the first day of March and the first day of September of each year subsequent to the date of said mortgage, it being agreed in [89] and by the

terms of said mortgage that the debt secured thereby should bear six per cent (6%) interest, payable semi-annually on the first day of March and the first day of September of each year, the principal of said notes, however, being payable as follows:

Notes numbered 1 to 30, both inclusive, on September 1, A. D. 1912.

Notes numbered 31 to 60, both inclusive, on March 1, A. D. 1913.

Notes numbered 61 to 95, both inclusive, on September 1, A. D. 1913.

Notes numbered 96 to 130, both inclusive, on March 1, A. D. 1914.

Notes numbered 131 to 170, both inclusive, on September 1, A. D. 1914.

Notes numbered 171 to 215, both inclusive, on March 1, A. D. 1915.

Notes numbered 216 to 265, both inclusive, on September 1, A. D. 1915.

Notes numbered 266 to 315, both inclusive, on March 1, A. D. 1916.

Notes numbered 316 to 370, both inclusive, on September 1, A. D. 1916.

Notes numbered 371 to 425, both inclusive, on March 1, A. D. 1917.

That said notes described in said mortgage were guaranteed by the defendants, J. E. Blazier and E. J. Blazier.

XI.

That in and by the terms of said mortgage trust deed the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company agreed to pay the notes

so issued thereunder and the interest installments thereon as the same matured from time to time, and also covenanted and agreed to pay all the taxes and assessments of all kinds and descriptions which might be assessed, levied or [90] charged against any part of the said security, and in case default should be made in the payment of any interest when due on any note secured by said mortgage and any such default should continue for a period of sixty (60) days, or in the payment of the principal of any note secured thereby when the same should become due and payable, or in the payment of any moneys for the use of the sinking fund provided in said mortgage, for a period of sixty (60) days after the same should become due and payable, or in the due observance and performance of any covenant or condition required by said mortgage to be kept and performed by said companies or any of them and such default should continue for sixty (60) days after written notice thereof to said companies by the said William W. Crawford, trustee, that the said Crawford, as trustee, might declare the principal of all the notes secured by said mortgage then outstanding to be due and payable, and upon such declaration the principal should immediately become due and payable, and that the said trustee having so declared the entire issue of notes to be due and payable might proceed to foreclose said mortgage and to enforce the lien thereof; and upon the commencement of suit should be entitled to the appointment of a receiver for the properties of said companies.

That the Washington Northern Railroad Com-

pany, the Oregon-Washington Timber Company, and the Blazier Timber Company have defaulted in the payment of the interest upon said notes and have defaulted in the payment of the matured notes, and that this cross-complainant, William W. Crawford, as trustee, has declared the entire sum secured by said mortgage immediately due, and has notified said companies; that the said companies have failed to pay the taxes upon the property described in said mortgage and that such default has continued for more than [91] twelve months.

It was further covenanted in said mortgage that upon the foreclosure and sale of the property securing said issue of notes and described in said mortgage, the proceeds of any sale of the trust estate, or any part thereof, together with any other sums held by the trustee as part of the trust estate, should be applied.

First. To the payment of all costs of suit, including all reasonable fees and expenses of the trustee and of any receiver or receivers appointed therein, together with reasonable attorneys' and solicitors' fees, and all costs of advertisement, sale and conveyance.

Second. To the payment of all other expenses of the trust created by said mortgage, including all moneys advanced by the trustee or the holder or holders of any notes for taxes, tax deeds, assessments, abstracts, repairs, mechanics' and other liens and insurance on the trust estate, with interest thereon at the rate of 6% per annum, and of all expenses, liabilities and advances reasonably and prop-

erly incurred by the trustee in managing, maintaining or caring for the trust estate or any part thereof, or in the performing or executing any of his duties or powers therein.

Third. To the pro rata payment of all coupons remaining unpaid and interest thereon at the rate of 6% per annum.

Fourth. To the pro rata payment of the principal of the notes issued under said mortgage and remaining unpaid.

Fifth. To the payment of the overplus, if any, to the Companies jointly or proportionately as they may elect and order, or to whomsoever shall be entitled thereto.

It is further covenanted in said mortgage that pending the foreclosure the said William W. Crawford, as trustee, might at his option take possession of the properties and operate them. [92]

XII.

That the said Oregon-Washington Timber Company, the Washington Northern Railroad Company, and the Blazier Timber Company have failed to pay any part of either principal or interest upon said notes, and that under the provisions of said mortgage, as heretofore stated, the said cross-complainant William W. Crawford, trustee, has declared the entire sum immediately due and payable, and that the whole sum of Four Hundred Twenty-five Thousand Dollars (\$425,000) with interest, according to the terms of said mortgage and notes, is now due and unpaid.

XIII.

That on the 4th of June, 1910, the Washington Northern Railroad Company executed to the Mississippi Valley Trust Company, as trustee, a certain mortgage or deed of trust hereinbefore referred to and referred to in the complaint on file in this action, which mortgage is recorded in book "I" at page 339 of the mortgages recorded in the office of the auditor of Skamania County, Washington, to secure an issue of One Million Dollars of bonds.

That on the 4th of June, 1910, the Oregon-Washington Timber Company executed and delivered to the Mississippi Valley Trust Company, as trustee, a mortgage to secure Six Hundred Thousand Dollars of first mortgage bonds, and a second mortgage or trust deed to secure an issue of Four Hundred Thousand Dollars of second mortgage bonds; said first mortgage to secure \$600,000 of bonds being recorded in book "I" at page 296 of the mortgage records in the office of the auditor of Skamania County, Washington; and said second mortgage to secure \$400,000 of second mortgage bonds being also recorded in book "—" at page — of the mortgage records in the office of the auditor of Skamania County, Washington, and that reference is [93] hereby made to the said recorded mortgage of the Washington Northern Railroad Company and to the first and second mortgages of the Oregon-Washington Timber Company.

XIV.

That by virtue of the provisions of the mortgage of March 1st, 1912, this cross-complainant as trustee became the owner and holder of \$400,000 of the sec-

ond mortgage bonds of the Oregon-Washington Timber Company, together with \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company, which were pledged as collateral security for the payment of the said \$400,000 of second mortgage bonds of the Oregon-Washington Timber Company, and which were at the time of the execution of the mortgage deed of trust to the Mississippi Valley Trust Company lodged with the Mississippi Valley Trust Company. And this cross-complainant also, by virtue of said mortgage deed of trust, became entitled to the \$600,000 first mortgage bonds of the railroad company, held as collateral security by the Mississippi Valley Trust Company for the payment of the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company, as such mortgage bonds of the railroad company were from time to time released and delivered, or releaseable and deliverable by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgages of the timber company, referred to in the amended bill of complaint. And under and by virtue of the provisions of said mortgage deed of trust to this cross-complainant, William W. Crawford, of date March 1, 1912, this cross-complainant acquired a first lien upon all of the property of the Blazier Timber Company, hereinbefore described.

That the property so mortgaged to secure the \$425,000 of notes described in the mortgage of March 1st, 1912, is of less value than \$425,000, and that such security is wholly inadequate [94] to pay said

notes, or any considerable part thereof, and that this cross-complainant, William W. Crawford, as trustee, will be compelled to rely in large part for the payment of the \$425,000 upon the property mortgaged to him by the Washington Northern Railroad Company and the Oregon-Washington Timber Company, and that said William W. Crawford has a vital interest in having the proceeds of the sale of the properties of the Washington Northern Railroad Company and the Oregon-Washington Timber Company applied towards the payment of the \$425,000 of notes, in so far as the same are applicable under the terms and provisions of said mortgage deed of trust to the said William W. Crawford, trustee, of March 1, 1912; and is vitally interested in having determined what portion, if any, of the proceeds of the sale of the property of said railroad company and said timber company should be applied towards the payment of the \$570,000 first mortgage bonds of the Oregon-Washington Timber Company; and this cross-complainant insists as a matter of law, equity and good conscience that none of the holders of the \$570,000 of bonds of the Oregon-Washington Timber Company have any right to or should be entitled to any share in the property or bonds or the proceeds of any sale thereof of said railroad company until they have exhausted all their remedies against the said timber company and its properties.

XV.

That under the provision of the mortgages executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company it was pro-

vided that whenever a bond, either first or second, of the said timber company was paid by the said timber company, a bond for the same amount of the Washington Northern Railroad Company was to be returned to the said railroad company, cancelled or uncanceled, at the option of the said railroad company, and the trustee was [95] required to return to the said railroad company such bond upon the payment of one of the said timber company's bonds, and similar provisions were inserted in said mortgages for the surrender of the interest coupons appertaining to the said railroad company's bonds from time to time as the interest coupons appertaining to the said timber company's bonds were paid. And the alleged purchase by the said timber company of the bonds of the said railroad company discloses that it was the intention of the parties to use the bonds of the said railroad company merely as collateral security for the bonds of the said timber company, and that no recourse should be had against the said railroad company, its property or bonds, for the payment of the \$600,000 first mortgage bonds of the said timber company unless and until the property of the said timber company had been sold and the proceeds of sale applied to the payment of said timber company's bonds, and then only to the extent of any deficiency.

That the resolutions adopted by the board of directors and stockholders respectively, of the Oregon-Washington Timber Company and of the Washington Northern Railroad Company, and the agreement between the said railroad company and the

said timber company disclose that the proceeds of the \$600,000 first mortgage bonds of the timber company, amounting to \$540,000, were to be used as follows:

- (a) For the retirement of the outstanding mortgage of \$150,000 then on the property of the railroad company, which mortgage was pledged as additional collateral to secure the payment of a first mortgage for the same amount, it being understood that the payment of \$150,000 should operate as a release of both the \$150,000 mortgage of the railroad company and the \$150,000 mortgage of the timber company.....\$150,000.
- (b) For the payment of the floating indebtedness of the railroad company 125,000.
- (c) For extensions, betterments and improvements of the property of the railroad company 215,000.

[96]

(d) Loaned to the timber company by the railroad company\$ 50,000,
—all of which is set forth in a certain agreement dated June 4, 1910, executed by the Washington Northern Railroad Company and the Oregon-Washington Timber Company, which said agreement is in words and figures following, to wit:

“SALE OF \$1,000,000 WASHINGTON NORTH-
ERN RAILROAD COMPANY 6% BONDS.

Portland, Oregon, June 4, 1910.

Washington Northern Railroad Company,
Portland, Oregon.

Dear Sirs:

We understand that you are proposing to make certain extensions to your railroad (formerly owned by the Cape Horn Railroad Company), the result of which will be to increase our facilities for marketing the timber from our lands in Skamania County, Washington, and that you have authorized an issue of One Million Dollars (\$1,000,000) par value first mortgage six per cent gold bonds, dated the 4th day of June, 1910, due on the 1st day of May, 1928, and secured by a first mortgage on your railroad property.

We propose to buy from you the entire issue of One Million Dollars (\$1,000,000) par value of said bonds and pay you therefor Four Hundred Thousand Dollars (\$400,000) par value of our bonds, as hereinafter described, and the sum of \$540,000 in money, said money to be used for the following purposes:

One Hundred and Fifty Thousand Dollars (\$150,000) to be used for the present or future payment or retirement of the outstanding first mortgage for \$150,000 now on your railroad property, which mortgage is now pledged as additional collateral to secure the payment of a first mortgage for the same amount on our lands and timber in Skamania County, Washington, it being understood that both

of said \$150,000 mortgages shall be paid and released by the payment of said \$150,000.

One Hundred and Twenty-five Thousand Dollars (\$125,000) to be used for the payment of the present floating indebtedness of the Cape Horn Railroad Company.

Two Hundred and Fifteen Thousand Dollars (\$215,000) to be used for extensions, betterments and equipment to your railroad property.

Fifty Thousand Dollars (\$50,000) to be loaned by you to us on our note for that amount dated the 4th day of June, 1910, due on demand, with interest from its date at the rate of 6% per annum. Said loan and interest to be repaid by us by the payment to you (until said loan and interest are paid) [97] of fifty (50) cents on every thousand (1000) feet board measure of logs taken from our timber lands in Skamania County, Washington, after January 1st, 1911, and we agree to take from said lands and ship over your railroad at least sixty million (60,000,000) feet of logs every year, beginning January 1st, 1911, until all merchantable timber on said lands is exhausted, and upon our failure so to do and to make said payments of fifty cents for every 1000 feet of logs we agree to at once pay said note and interest, or the balance due or to become due thereon in cash. Said payments to be made on or before the 10th day of each month for all logs taken during the previous month.

As a further consideration for the sale to us of the said \$1,000,000 of your bonds, and without any new or further consideration, we agree to sell and deliver

to you \$400,000 par value 6% of gold bonds issued by us, dated the 4th day of June, 1910, due serially \$30,000 par value every six months, beginning May 1st, 1922, the last \$40,000 thereof maturing May 1st, 1928, and secured by second mortgage on our lands and timber in Skamania County, Washington, and secured also by \$400,000 par value of the \$1,000-000 par value now proposed to be purchased by us from you; said \$400,000 par value of our bonds so sold to you, however, or the proceeds of the sale thereof to be used by you only for future extensions, betterments or equipment to your railroad, after the expenditure of the said sum of \$540,000 above mentioned.

The \$1,000,000 par value of your bonds hereby proposed to be purchased by us are all to be executed and delivered by you to the Trustee in the mortgage securing the same, and to be by said Trustee duly authenticated, and the \$600,000 par value thereof to be deposited with the Mississippi Valley Trust Company of St. Louis, Missouri, to be by it held in trust as security under the terms of a certain first mortgage dated June 4, 1910, executed by us to said Mississippi Valley Trust Company to secure an issue of \$600,000 par value of 6% gold bonds issued by us, and the remaining \$400,000 par value of your bonds hereby proposed to be purchased are to be deposited with the said Mississippi Valley Trust Company to be by it held in trust as security under the terms of a certain second mortgage dated June 4, 1910, executed by us to said Trust Company to secure an issue of \$400,000 par value second mortgage 6% gold bonds

issued by us, which latter \$400,000 par value second mortgage bonds are the bonds hereinabove agreed to be sold and delivered to—

The said sum of \$540,000 to be deposited as needed for the purposes mentioned above to your credit at said Mississippi Valley Trust Company and to be paid out in checks signed by you and countersigned by said Trust Company for said purposes.

Your agreement to the above proposition to be indicated by your written acceptance indorsed hereon.

Yours truly,

OREGON-WASHINGTON TIMBER COMPANY.

By J. E. BLAZIER,
President. [98]

ACCEPTED: June 4, 1910.

WASHINGTON NORTHERN RAILROAD COMPANY.

By E. J. BLAZIER,
President.

That the resolutions adopted by the board of directors and stockholders respectively of the Washington Northern Railroad Company and the Oregon-Washington Timber Company as to the above application of the proceeds of the \$600,000 of the first mortgage bonds of the timber company by the railroad company and the fact of the foregoing agreement between the said railroad company and the said timber company was well known to the said Mississippi Valley Trust Company at the time of the execution and delivery to it of the \$600,000 first mortgage bonds of the said timber company and of

the mortgage securing the same.

XVI.

That on the 4th day of June, 1910, the Oregon-Washington Timber Company entered into an agreement with Frank P. Hays and William C. Little, doing business as Little & Hays of St. Louis, Missouri, for the sale of the \$600,000 first mortgage bonds of the timber company, which said agreement also discloses that the proceeds of the sale of said bonds were to be applied to the purposes stated in the preceding paragraph, and that the proceeds of the sale of said bonds were to be placed to the credit of the Mississippi Valley Trust Company and paid out by the Trust Company upon the check of the railroad company for the purposes above stated, a copy of which agreement is as follows, to wit:

“SALE OF \$600,000 OREGON-WASHINGTON
TIMBER COMPANY 6% BONDS.

Portland, Oregon, June 4, 1910.

Messrs. Little & Hays,
St. Louis, Missouri.

Gentlemen:

We propose to sell to you our entire issue of \$600,000 [99] par value of 6% gold bonds, secured by a first mortgage on our lands and timber in Skamania County, Washington, and secured also by \$600,000 par value of gold bonds of the Washington Northern Railroad Company, secured by a first mortgage on its railroad and equipment; and we also propose to include in said sale \$999,300 par value of the capital stock of said Washington Northern Railroad Company, all for the sum of \$540,000.

Said sum of \$540,000 to be used for the benefit of said Washington Northern Railroad Company, which is purposing to extend its railroad through our lands in Skamania County, Washington, thereby increasing our facilities for marketing our timber; and said sum is to be used for the following specific purposes, to wit:

\$150,000 to be used for the present or future payment or retirement of the outstanding first mortgage for \$150,000 on the property of said Railroad Company, which mortgage is now pledged as additional collateral to secure the payment of a first mortgage of the same amount on our lands and timber in Skamania County, Washington, it being understood that both of said \$150,000 first mortgages shall be paid and released by the payment of said \$150,000.

\$125,000 to be used for the payment of the present floating indebtedness of the Cape Horn Railroad Company.

\$215,000 to be used for extensions, betterments and equipments of the Washington Northern Railroad.

\$50,000 to be loaned by said Railroad Company to us on our note.

The \$600,000 par value of the bonds offered to be sold are to be duly executed by us and deposited with the Mississippi Valley Trust Company of St. Louis, Missouri, to be authenticated by it and delivered to you upon your demand from time to time, and upon the payment to said Mississippi Valley Trust Company of \$900 and accrued interest for every \$1000 par value of bonds so delivered, the money so paid by you to be deposited in said Trust Company to the

credit of said Washington Northern Railroad Company and to be paid out for the purposes above mentioned on the check of said Railroad Company, countersigned by said Trust Company.

Your agreement to the above proposition to be indicated by your written acceptance endorsed hereon.

OREGON-WASHINGTON TIMBER COMPANY.

By J. E. BLAZIER,
President.

Accepted June 10th, 1910.

LITTLE & HAYS.
By FRANK P. HAYS.

That a syndicate was formed by Little & Hays of St. Louis, Missouri, to purchase said \$600,000 first mortgage bonds of the timber company, and that so far as this cross-complainant [100] is advised the following are members of the syndicate who purchased said bonds, with the amount of their purchases set after their respective names:

John A. Prescott & Company, of Kansas City, Missouri.....	\$200,000
Frank P. Hays and William C. Little, of St. Louis, Missouri, doing business as Little & Hays.....	200,000
— Hays, brother of the said Frank P. Hays, about.....	50,000
Breckinridge Jones, President Mississippi Valley Trust Company.....	15,000
— Davis, Vice-president Mississippi Val- ley Trust Company.....	15,000

Eli Klotz, Director Mississippi Valley Trust Company.....	50,000
James Grover, Bond Officer, Mississippi Valley Trust Company.....	20,000
James E. Broeck, Director, Treasurer Mississippi Valley Trust Company.....	10,000

That a large portion of said \$600,000 first mortgage bonds of the timber company is now held by the members of said syndicate, as above set forth, and that all of said parties had knowledge and notice that the proceeds of the sale of said bonds should be applied to the purposes hereinbefore set forth; and in truth and in fact all of the proceedings relative to the issuance of said \$600,000 bonds and the execution and delivery of the mortgage securing the same, were directed by said syndicate and by officers and agents of the defendant Mississippi Valley Trust Company. That the Mississippi Valley Trust Company and the Union Trust Company are acting in the capacity of trustees and represent the holders of said bonds and have and can have no higher rights than the bondholders whom they represent, and such notice to the bondholders constituted notice to said Mississippi Valley Trust Company and to said Union Trust Company; and in addition thereto the said Mississippi Valley Trust Company had full and actual knowledge of the facts. [101]

XVII.

That the members of the syndicate above mentioned, whom this cross-complainant avers to be the present holders of more than \$300,000 of the first mortgage bonds of the Oregon-Washington Timber

Company, acquired, as a part of the consideration for the purchase of the \$600,000 first mortgage bonds of the said timber company, practically all of the stock of the Washington Northern Railroad Company, amounting to 9993 shares of the part value of \$999,300.

XVIII.

That on or about the 16th day of February, 1911, the Blazier Timber Company was incorporated under the laws of the State of Oregon, with a capital stock of \$200,000.

That between the 3d and the 18th day of March, 1911, the stockholders and board of directors of the Washington Northern Railroad Company, the Oregon-Washington Timber Company, and the Blazier Timber Company, respectively, authorized the execution by the three companies of a series of joint collateral notes, to be known as "Series A" and to consist of notes aggregating the principal sum of \$100,000, and authorized the execution by the three companies of a series of joint collateral notes to be known as "Series B" and to consist of notes aggregating the principal sum of \$150,000. That these notes were described as "First Mortgage and Collateral Notes, Series A" and "Series B," respectively, and were secured:

First. By an indenture dated January 30th, 1911, executed by the two timber companies and the railroad company to the Mississippi Valley Trust Company, by which the Blazier Timber Company conveyed and mortgaged to the trustee all of its property of every kind then owned or thereafter acquired, by it, and the railroad company assigned to

the trustee the \$400,000 second [102] mortgage bonds of the Oregon-Washington Timber Company, together with the \$400,000 first mortgage bonds of the railroad company deposited as collateral security for the payment of the second mortgage bonds of said timber company. (The option of the aforesaid Little & Hays to purchase the said \$400,000 second mortgage bonds of the Oregon-Washington Timber Company, was by them at this time surrendered.) That the proceeds of the \$100,000 "Series A" notes were to be used for the purchase by the Blazier Timber Company of the tract of land known as the "Sibley Tract," and in furtherance of a certain hauling contract between said company and the Washington Northern Railroad Company, and the entire \$100,000 of the proceeds of said "Series A" notes, with the exception of \$12,783, was used for that purpose.

That the \$150,000 "Series B" notes represented the amount to be paid to the syndicate above named, the present holders of \$300,000 of the first mortgage bonds of the Oregon-Washington Timber Company, represented by the said Mississippi Valley Trust Company and the said Union Trust Company, for the stock of the railroad company, which had been sold—as above stated—with the first mortgage bonds of the said timber company; and said \$150,000 "Series B" notes were delivered by the three companies to the said syndicate above named, in payment of the purchase price of the stock of the railroad company which was held and owned by the members of the syndicate. That the stock of the

railroad company was not, however, sold to either of the timber companies, nor to the railroad company, but was sold and delivered to J. E. Blazier individually. That the purchase price of said stock was paid by the three companies in the form or notes aggregating \$150,00, described as "Series B" notes, and at the time of the meeting of the stockholders of the railroad company authorizing the issuance of such notes in the sum of \$150,000 for such purpose, all of the stock of [103] the railroad company was held and voted by the members of said syndicate, the present holders of the bonds sought to be foreclosed in this action. That until the 3d day of May, 1911, a majority of the directors of said railroad company was composed of members of said syndicate, and that the said Hays was president of said railroad company and the said Klotz was secretary thereof at such time.

That such stock of the railroad company was delivered to one J. E. Blazier and ever since has been held and used by him as his individual property.

That the amount of said "Series B" notes for \$150,000, or, as this cross-complainant is informed and believes and so charges, practically said amount, was subsequently paid to the members of said syndicate, the holders thereof, at their instance and with their connivance, by the Washington Northern Railroad Company and the Blazier Timber Company.

That the execution, delivery and payment of the said \$150,000 "Series B" notes to the said persons constituted an unlawful diversion of the funds of

the said companies, which at the time of said payment were dominated and controlled by the members of said syndicate; that said \$150,000 so paid constitutes an offset against the holders of the \$570,000 of bonds represented by the said Mississippi Valley Trust Company and the said Union Trust Company.

That the payment of the said \$150,000 is in equity a payment of the bonds sought to be enforced in this action to the extent of said \$150,000, and that the complainants are estopped to enforce their said claims to the extent of \$150,000, which sum they have already received from said railroad company and the said timber company. [104]

XIX.

This cross-complainant further alleges that \$400,000 of the second mortgage bonds of the Oregon-Washington Timber Company and \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company, numbered from 601 to 1000, both inclusive, and \$30,000 first mortgage bonds of said railroad company, numbered from 1 to 30, both inclusive, have been issued, sold, assigned, transferred and pledged to him; and alleges that said bonds are entitled to participate with the \$570,000 bonds of the Washington Northern Railroad Company, numbered from 31 to 600, both inclusive, and in the proceeds of the sale of the property covered by said mortgage of said railroad company to the Mississippi Valley Trust Company; and further alleges that he not only claims the right to enforce said \$430,000 first mortgage bonds of the Washing-

ton Northern Railroad as of equal dignity to the \$570,000 first mortgage bonds of said railroad company, represented by the complainants in this action, but he claims he is entitled to prior right to participate in the proceeds of the sale of the property of the railroad company over said \$570,000 as against such holders of the aforesaid first mortgage bonds of the said Oregon-Washington Timber Company as are estopped or precluded from participating in the proceeds of the sale of the property of said railroad company as hereinbefore more fully set forth.

This cross-complainant further alleges that all of the property of the Blazier Timber Company, including the property acquired from the Weist Logging Company, referred to in the complaint, is subject to his mortgage and that his mortgage or deed of trust constitutes a first lien upon all of said property of whatsoever nature or kind owned by the Blazier Timber Company. [105]

That the complainants and defendants in this action claim some interest in the property covered by this cross-complainant's mortgage, but that such interests or claims are inferior and subordinate to the claims of this cross-complainant.

XX.

That it was provided in the mortgage given by the Washington Northern Railroad Company, the Oregon-Washington Timber Company, and the Blazier Timber Company to this cross-complainant that at any foreclosure sale of the properties covered by said mortgage, the note holders secured

thereby might bid at said sale and pay their bids in part by their endorsement on their bonds of such credits as such bonds be entitled to from the purchase price of the properties sold at such sale or sales.

XXI.

That your orator has no plain, speedy or adequate remedy at law. That all of the facts and circumstances herein set forth are true and entitle your orator to relief at the hands of a court of equity.

WHEREFORE, your orator, this cross-complainant, William W. Crawford, trustee, brings this his cross-bill and prays:

1. For a judgment against the Oregon-Washington Timber Company, the Washington Northern Railroad Company, and the Blazier Timber Company, and J. E. Blazier and E. J. Blazier for the sum of Four Hundred Twenty-five Thousand Dollars (\$425,000) with interest as provided in the notes set forth in the mortgage deed of trust; and for a decree of this Court establishing the said sum as a valid first lien upon all of the property described in his mortgage trust deed pledged or mortgaged by the Blazier Timber Company; and establishing his ownership of and title to \$430,000 of the first mortgage bonds of the Washington [106] Northern Railroad Company, described in this cross-complaint and adjudicating such bonds to be of equal rank with the \$570,000 of first mortgage bonds of the railroad company represented by the complainants herein, except such portion of said \$570,000 as

are owned by the defendants Frank P. Hays and William C. Little, copartners doing business as Little & Hays; — Hays; Breckinridge Jones; Eli Klotz; James Grover; James E. Broeck; J. E. Blazier, E. J. Blazier, and John A. Prescott and D. L. Robinson, copartners doing business as John A. Prescott & Company, and establishing such bonds as superior to the bonds held by such last-named parties, and establishing his title to and ownership of, in and to the \$400,000 of second mortgage bonds of the Oregon-Washington Timber Company; and for a decree foreclosing his said mortgage and directing the sale of the properties described therein; and for a decree barring and enjoining the defendants Frank P. Hays, William C. Little, — Hays, Breckinridge Jones, Eli Klotz, James Grover, James E. Broeck, J. E. Blazier, E. J. Blazier, John A. Prescott and D. L. Robinson from participating in the proceeds of the sale of the properties covered by the first mortgage of the Oregon-Washington Timber Company and the second mortgage of the Oregon-Washington Timber Company, and the first mortgage of the Washington Northern Railroad Company, in the event that this Court permits the foreclosure of such mortgages in accordance with the prayer of the complainants in their amended bill of complaint, and establishing the right of this cross-complainant to participate in the proceeds of the sale of the properties of the Washington Northern Railroad Company on an equal basis with the holders of the first mortgage bonds of the railroad company who are not estopped by the decree of this

Court from participating therein.

And in the event that the Court decrees the foreclosure [107] of cross-complainant's mortgage, or the complainants' mortgages or any of them, that the rights of the parties to this suit may be determined by decree and the funds arising from said sale may be distributed in accordance with the rights and equities of the respective parties, and that such hearings may be had as shall suffice to advise the Court thoroughly with reference to the rights of all the parties to this suit and the rights of all the bondholders secured by said mortgages.

Your orator further prays that in and by said decree it may be provided that any bondholder secured by said mortgages may bid at the said sale and may pay such portions of their bids as their bonds shall be entitled to under the said decree by endorsement of said amounts upon their bonds. That the amounts due under all of said mortgages may be determined and fixed by said decree; and that your orator may be awarded in and by said decree a reasonable and suitable sum for his services in administering said trust and that he may likewise be awarded a reasonable sum for the services of his attorneys and that he may be allowed for all disbursements by him made; and that he may be granted such other and further relief as shall be meet and equitable in the premises.

KERR & McCORD,
Attorneys for Cross-complainant.

(Verified.)

(Filed June 8, 1914.) [108]

[Title of Court and Cause.]

Answer to Cross-complaint.

To the Honorable the Judges of the Above-entitled Court:

The Mississippi Valley Trust Company and Union Trust Company, trustees and complainants in the above suit in chief, having been made defendants to the cross-bill of William W. Crawford, for answer thereto admit, deny and aver as follows:

I.

Admit the allegations of paragraph I of the cross-bill. [109]

II.

Admit the allegations of paragraph II.

III.

Admit the allegations of paragraph III.

IV.

Admit the allegations of paragraph IV.

V.

Admit the allegations of paragraph V.

VI.

Admit the allegations of paragraph VI.

VII.

Admit the allegations of paragraph VIII.

VIII.

Admit the allegations of paragraph IX.

IX.

Admit the allegations of paragraph X.

X.

These complainants in the cause in chief and defendants to the cross-bill are without knowledge as

to whether or not the Washington Northern Railroad Company, the Oregon-Washington Timber Company, and the Blazier Timber Company, or either thereof, have defaulted in the payment of interest upon the notes described in the cross-bill and as to whether they, or either of them, have defaulted in the payment of the matured notes, and as to whether the cross-complainant has declared the entire sum secured by his mortgage due or as to the length of time that the said alleged default has continued.

XI.

These complainants and defendants to the cross-bill are wholly without knowledge as to whether the Oregon-Washington Timber Company, the Washington Northern Railroad Company, and the Blazier Timber Company, or either thereof, have failed to pay the principal and interest on the notes of the cross-complainant, [110] or as to whether the cross-complainant has declared the entire debt due, or as to whether the entire debt is now due.

XII.

These defendants to the cross-bill admit the allegations of paragraph XIII thereof.

XIII.

These defendants to the cross-bill deny that by reason of the matters in the cross-bill alleged, or otherwise, the cross-complainant as trustee, or otherwise, became the owner or holder of \$400,000 of the second mortgage bonds of the Oregon-Washington Timber Company, or any thereof, or \$400,000 of the first mortgage bonds of the Washington

Northern Railroad Company, or any thereof. These defendants to the cross-bill admit that the cross-complainant is entitled to the bonds of the Washington Northern Railroad Company as such bonds are from time to time released and delivered, or releasable and deliverable, by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgages of the Oregon-Washington Timber Company, referred to in the amended bill of complaint, and these defendants to the cross-bill admit that the cross-complainant acquired a first lien on the property of the Blazier Timber Company, and these defendants admit that the property of the Blazier Timber Company is inadequate to pay the mortgage debt asserted by the cross-complainant, and that it is to the interest of the cross-complainant that a part of the proceeds of the sale of the properties of the Washington Northern Railroad Company and the Oregon-Washington Timber Company be applied to the payment of his debt, but these defendants to the cross-bill deny that the cross-complainant is entitled to have any of the said properties sold for the payment of the debt of the cross-complainant, or to have the proceeds of the sale of the said properties applied to the debt of the cross-complainant until the debt asserted in the amended bill of complaint has been [111] paid and satisfied in full, and these defendants to the cross-bill deny that these defendants should have no right to the proceeds of the sale of the property of the Washington Northern Railroad Company until they have exhausted all other remedies against the

Oregon-Washington Timber Company, and these defendants deny each and every other allegation not heretofore admitted in the 14th paragraph of the said cross-bill.

XIV.

These defendants to the cross-bill admit that the mortgages executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company on the 4th of June, 1910, contained the provision recited in the 15th paragraph of the cross-bill, but these defendants to the cross-bill deny that the purchase by the Oregon-Washington Timber Company of the bonds of the Washington Northern Railroad Company discloses that it was the intention of the parties to use the bonds of the said railroad company merely as collateral security for the bonds of the timber company, or that no recourse should be had against the railroad company, or its property or bonds, for the payment of the \$600,000 first mortgage bonds of the said timber company unless or until the property of the said timber company had been sold and the proceeds of the sale thereof applied to the payment of the said timber company bonds, and these defendants to the cross-bill deny that the properties of the railroad company when sold should be applicable only to the payment to these defendants to the cross-bill of any deficiency remaining in their debt after payment to it of the proceeds of the timber company properties. These defendants to the cross-bill deny each and every allegation remaining in the 15th paragraph of the cross-bill and not stricken out by the Court, except as hereinbefore specifically admitted.

XV.

These defendants to the cross-bill deny the allegations [112] contained in the 19th paragraph thereof, and deny specifically that \$400,000 of second mortgage bonds of the Oregon-Washington Timber Company, or any thereof, and that \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company, numbered from 601 to 1000 inclusive, or any thereof, or \$30,000 first mortgage bonds of the said railroad company, numbered from 1 to 30 inclusive, or any thereof, have been issued, sold, assigned, transferred, or pledged to cross-complainant, and deny that the said bonds, or any thereof, are entitled to participate with the \$570,000 of bonds of the Washington Northern Railroad Company numbered from 31 to 600 inclusive; or in the proceeds of the sale of the property covered by the said mortgage of the said railroad company to the Mississippi Valley Trust Company. These defendants to the cross-bill admit that the cross-complainant makes the claims set forth in the 19th paragraph of the cross-bill, but they deny that the said claims are meritorious or just or legal, or that the cross-complainant is entitled to the matters and things claimed by him.

These defendants to the cross-bill admit that the property of the Blazier Timber Company is subject to the lien of the mortgage of cross-complainant, but they deny that the property acquired from the Wiest Logging Company is subject to such lien.

These defendants to the cross-bill admit that they claim an interest in the property acquired from the Wiest Logging Company, and admit that they claim

a prior and first lien on the property described in the complaint.

XVI.

These defendants to the cross-bill admit the allegations of paragraph XX thereof.

XVII.

These defendants to the cross-bill deny each and every allegation contained in the 21st paragraph thereof, except that [113] these defendants admit that the remedy, if any, of the defendant Crawford is in equity.

WHEREFORE, having fully answered these defendants to the cross-bill pray that they may be hence dismissed with their costs and disbursements.

SNOW & McCAMANT,
HUFFER & HAYDEN,

Solicitors for Mississippi Valley Trust Company and
Union Trust Company.

(Verification.)

(Acceptance of service.)

(Filed July 2, 1914.) [114]

Reply.

Come now the complainants and for their reply to the first further and affirmative defense contained in the answer of the defendant William W. Crawford, trustee:

I.

Complainants deny that the amended bill of complaint shows on its face, or otherwise, that two separate causes of action have been improperly united in said amended bill of complaint, or that the said

amended bill of complaint is multifarious in the respect pointed out in paragraph I of the said separate answer, or otherwise, and complainants deny that there is a misjoinder of causes of action in the said amended bill of complaint.

II.

Complainants deny that there is a misjoinder of parties plaintiff in the respect pointed out in paragraph II of the said affirmative answer, or otherwise.

III.

Complainants deny that there is a misjoinder of parties defendant in the respect pointed out in paragraph III of the said affirmative answer, or otherwise.

IV.

Complainants admit that the amended bill shows that the Mississippi Valley Trust Company holds \$570,000 of the bonds of the Washington Northern Railroad Company as collateral security for the payment of the \$600,000 bonds issued by the Oregon-Washington Timber Company, and that the amended bill discloses an attempt to foreclose the two mortgages given by two different parties in this suit, but [115] complainants deny that the said matters are two distinct subject matters, and deny that the causes of action arising therein are not joint and deny that the liability asserted against the Oregon-Washington Timber Company is distinct, separate, or different from the liability asserted against the defendant, the Washington Northern Railroad Company, and deny that sufficient grounds are not shown in the

said amended bill for uniting the matters comprehended therein in order to promote the convenient administration of justice and in this behalf complainants aver that the said mortgages are in effect two mortgages for the security of the same debt.

For reply to the second affirmative answer of the defendant William W. Crawford, trustee, complainants admit the allegations of paragraph I of the said second affirmative answer.

II.

Complainants admit the allegations of paragraph II thereof.

III.

Complainants admit the allegations of paragraph III thereof.

IV.

Complainants deny that by virtue of the matters and things averred in the said affirmative answer, or otherwise, the defendant William W. Crawford as trustee became the owner and holder of \$400,000 of the first mortgage bonds of the Washington Northern Railroad Company, or any bonds thereof. Complainants admit that the defendant William W. Crawford became entitled to \$600,000 of the first mortgage bonds of the Washington Northern Railroad Company as the said bonds are from time to time released and delivered, or releasable and [116] deliverable, by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgages of the Oregon-Washington Timber Company, but only after the payment to complainants of the debt averred in the amended bill.

Complainants admit that by the mortgage deed of trust referred to in the answer the defendant William W. Crawford acquired a first lien upon all of the property of the Blazier Timber Company, and complainants admit that the property of the Blazier Timber Company so pledged to the defendant Crawford is of less value than \$425,000, and that the said security is inadequate to pay obligations aggregating \$425,000, but complainants deny that the said security is inadequate to pay a considerable part of the said \$425,000 referred to in the said answer. Complainants are not advised as to the value of the property of the Blazier Timber Company and ask that the defendant Crawford make his proof thereof. Complainants admit that the said defendant will be compelled to rely in part upon the property mortgaged to him by the Oregon-Washington Timber Company and the Washington Northern Railroad Company and that the said defendant has a vital interest in having the proceeds of sale of the properties of the Washington Northern Railroad Company and the Oregon-Washington Timber Company applied toward the payment of the defendant Crawford's debt in so far as the said proceeds are applicable, and admits that the said defendant Crawford is vitally interested in having determined what portion of the proceeds of the sale of the said properties should be applied toward the payment of the \$570,000 first mortgage bonds of the Oregon-Washington Timber Company. Complainants deny that as a matter of law, equity, or good conscience, or otherwise, none of the holders of the \$570,000 bonds of the Oregon-

Washington Timber Company have [117] any right or should be entitled to any share in the property or bonds or proceeds of any sale thereof, or of the properties of the Washington Northern Railroad Company until they have exhausted all or any of their remedies against the Oregon-Washington Timber Company or its property.

V.

Complainants admit that under the provisions of the mortgage executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company it was provided that whenever a bond, either first or second, of the said timber company was paid by the said timber company, a bond for the same amount of the Washington Northern Railroad Company was to be returned to the said railroad company, canceled or uncanceled, at the option of said railroad company, and admit the trustee was required to return to the said railroad company in such case such bond upon the payment of one of the timber company's bonds, and complainants admit that similar provisions were inserted in said mortgages for the surrender of the interest coupons appertaining to the said railroad company's bonds from time to time as the interest coupons appertaining to the said timber company's bonds were paid. Complainants admit that the purchase by the Oregon-Washington Timber Company of the bonds of the Washington Northern Railroad Company discloses that it was the intention of the parties to use the bonds of the Washington Northern Railroad Company as collateral security for the bonds of the Oregon-Wash-

ington Timber Company, but complainants deny that such use was the only use contemplated or that the said bonds were to be used merely or only for such purpose. Complainants deny that it was a part of the said agreement, or that it is the law, or [118] that it is equitable or just that no recourse should be had against the Washington Northern Railroad Company, its property or bonds for the payment of the \$600,000 first mortgage bonds of the said Oregon-Washington Timber Company unless, or until the property of the said Oregon-Washington Timber Company has been sold, or the proceeds of the sale of the same have been applied to the payment of the said timber company's bonds, or that recourse should be had to the security in any event only to the extent of a deficiency.

FOR A FURTHER AND AFFIRMATIVE REPLY to the answer of the defendant William W. Crawford, trustee, complainants aver:

I.

That although the mortgage of the defendant William W. Crawford, as alleged in his second affirmative answer, is in the sum of \$425,000, that the moneys advanced thereon and thereunder were \$300,000 and no more.

II.

That the defendant William W. Crawford, trustee, took the mortgages referred to in his second affirmative answer, and the notes and bonds secured thereby, and advanced the sum of \$300,000 thereon with full knowledge and notice of the rights of complainants and of the bondholders for whom complain-

ants are trustees. That the said defendant, at, and prior to the time of taking the said mortgages, notes, and bonds and making the advances aforesaid, was sufficiently advised of all of the transactions had between complainants and the defendants Washington Northern Railroad Company and Oregon-Washington Timber Company.

III.

That the defendant William W. Crawford ought not to be heard to say that he is entitled to participate in the [119] proceeds of the sale of the properties of the Washington Northern Railroad Company as the holder of any bonds thereof for the following reasons, to wit:

On or about the 4th day of June, 1910, an agreement was entered into between the defendant, the Washington Northern Railroad Company, and the defendant Oregon-Washington Timber Company, wherein and whereby it was agreed on sufficient consideration that \$400,000 of the bonds of the Washington Northern Railroad Company should be sold and disposed of on the express agreement, understanding and condition that the proceeds of such sale should be used wholly for the construction of extensions, betterments, and equipment of the defendant, the Washington Northern Railroad Company. That the defendant William W. Crawford, trustee, was well advised of the agreement between the said defendants aforesaid. That under the terms and conditions of the mortgages recited in the amended bill of complaint complainants had an interest in the said agreement between the said defendant mortgagors

for as much as after-acquired property of the said defendants was a part of the security pledged to complainants. That the advances made under the mortgage of the defendant William W. Crawford, trustee, were not used for the construction of extensions, or betterments on the railroad of the Washington Northern Railroad Company, nor were the said moneys used for the purchase of equipment for the said railroad of the Washington Northern Railroad Company, nor were the said advances made with intent that they should be used for either or any of the said purposes. That all of the said \$400,000 of bonds of the Washington Northern Railroad Company now claimed by the defendant William W. Crawford, trustee, were acquired [120] and became the property of the Washington Northern Railroad Company subsequent to the execution of the mortgage of Washington Northern Railroad Company to Mississippi Valley Trust Company and thereupon became subject to the lien of said mortgage. That the defendant William W. Crawford, trustee, cannot become entitled to the said bonds, or to any of the bonds of the Washington Northern Railroad Company, until after the said bonds have become the property of the said Washington Northern Railroad Company and until after the same have been paid, and that the rights of the said William W. Crawford, trustee, in and to the said bonds are subject and subsequent to the rights of complainants, as set forth in the bill of complaint, and to the rights of the owners of the bonds amounting to \$570,000, in the bill of complaint averred.

WHEREFORE, complainants pray as in their amended bill of complaint.

HUFFER and HAYDEN,
SNOW and McCAMANT,
Solicitors for Complainants.

(Verified.)

(Affidavit of service.)

(Filed Apr. 9, 1914.) [121]

Motion to Dismiss.

Comes now the defendant William W. Crawford, trustee, and moves the Court for an order dismissing the bill of complaint filed herein, upon the following grounds and for the following reasons:

I.

That the bill of complaint shows upon its face that two separate causes of action have been improperly united in the complaint:

(a) An action by the Mississippi Valley Trust Company to foreclose a mortgage or deed of trust executed by the Washington Northern Railroad Company to Mississippi Valley Trust Company, trustee, to secure an issuance of bonds in the aggregate amount of \$1,000,000.

(b) An action by the Mississippi Valley Trust Company and the Union Trust Company, trustees, to foreclose a certain mortgage or deed of trust executed by Oregon-Washington Timber Company, a corporation, to Mississippi Valley Trust Company and Union Trust Company, trustees, to secure an issuance of bonds of the Oregon-Washington Timber Company in the aggregate amount of \$1,000,000, consisting of \$600,000 first mortgage bonds and \$400,000

second mortgage bonds.

That there has been a misjoinder of causes of action in said complaint.

II.

That there is a misjoinder of parties plaintiff, in that the Mississippi Valley Trust Company, trustee under the mortgage of the Washington Northern Railroad Company is joined as a complainant with the Mississippi Valley Trust Company and [122] Union Trust Company, trustees under the mortgage executed by the Oregon-Washington Timber Company.

III.

That there has been in the bill of complaint a misjoinder of parties defendant in that the Washington Northern Railroad Company, which executed the deed of trust upon the property of the railroad company to secure an issuance of bonds by the railroad company, as above stated, is joined as a defendant with the Oregon-Washington Timber Company, which executed a mortgage to the Mississippi Valley Trust Company and the Union Trust Company, trustees, to secure an issuance of bonds by the Oregon-Washington Timber Company.

IV.

That the bill of complaint discloses upon its face that the Mississippi Valley Trust Company holds \$600,000 of the bonds of the Washington Northern Railroad Company as collateral security for the payment of the bonds issued by the Oregon-Washington Timber Company, and the bill of complaint discloses an attempt to foreclose two separate mortgages executed by different parties to different parties, in-

volving two distinct subject matters, in one action.

V.

That there is more than one complainant and the causes of action so attempted to be joined are not joint, and the liability asserted against the Oregon-Washington Timber Company is distinct, separate and different from the liability asserted against the defendant Washington Northern Railroad Company, and sufficient grounds are not shown for uniting the causes of action in order to promote the convenient administration of justice. [123]

VI.

That the bill of complaint does not constitute a valid cause of action in equity against the defendants.

Should the Court refuse the motion to dismiss the complaint, this defendant, William W. Crawford, trustee, moves the Court to require the complainants to elect whether the foreclosure of the mortgage of the Washington Northern Railroad Company shall proceed, or whether the foreclosure of the mortgage of the Oregon-Washington Timber Company shall proceed, and in the event of such election to strike from the bill of complaint all allegations touching the foreclosure of the mortgage that the complainants do not elect to proceed with.

W. W. CRAWFORD,

Trustee.

By KERR & McCORD,

His Solicitors.

E. S. McCORD and

J. A. KERR,

Solicitors for William W. Crawford, Trustee.

(Filed Nov. 15, 1913.) [124]

Order (Denying Motion to Dismiss and Allowing an Amended Bill to be Filed).

This cause coming on to be heard on this 1st day of December, 1913, complainants appearing by Wallace McCamant of their solicitors, and the defendant William W. Crawford, trustee, appearing by Messrs. Kerr & McCord, his solicitors.

IT IS ORDERED by the Court on application of counsel for complainants that the bill of complaint be amended by interlineation in that the word "railroad" be substituted for the word "timber" on the 24th page of the bill, where the same occurs in the 3d, the 11th, and the 16th typewritten lines, being identical with the 4th, the 13th, and the 18th numbered lines.

The motion of the defendant Crawford to dismiss the bill on the ground of the improper joinder of two causes of suit, and on the ground that the bill does not constitute a valid cause of action in equity, having been argued and submitted to the Court, said motion is by consideration of the Court denied and the defendant Crawford is allowed an exception to the order of Court denying the same.

Complainants on their application are allowed ten (10) days from this date within which to serve and file an amended bill, and the defendant Crawford is allowed twenty (20) days from the service of such amended bill within which to answer the same.

Dated December 3d, 1913.

EDWARD E. CUSHMAN,

Judge.

Amended Motion (to Strike from Answer of Crawford).

Come now complainants, Mississippi Valley Trust Company and Union Trust Company, and for their amended motion to strike out move the Court to strike out:

I.

Paragraph V of the said affirmative answer except the following portion thereof which is not moved against:

“That under the provisions of the mortgages executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company it was provided that whenever a bond, either first or second, of the timber company was paid by the timber company, a bond for the same amount of the Washington Northern Railroad Company was to be returned to the railroad company, cancelled or uncanceled, at the option of the railroad company, and the trustee was required to return to the railroad company such bond upon the payment of one of the timber company’s bonds, and similar provisions were inserted in said mortgages for the surrender of the interest coupons appertaining to the railroad company’s bonds from time to time as the interest coupons appertaining to the timber company’s bonds were paid. And the alleged purchase by the timber company of the bonds of the railroad company discloses that it was the intention of the parties to use the bonds of the rail-

road company merely as collateral security for the bonds of the timber company.”

II.

Paragraph VI of the said affirmative answer.

III.

Paragraph VII of the said affirmative answer.

Complainants move the Court to strike out each and every of the portions so moved against and the allegations by way of setoff and counterclaim contained therein on the following grounds, to wit:

(a) That the matters pleaded in the said portions of the answer of the said defendant are not germane to this suit and not proper to be litigated herein.

(b) That the matters set up in the portions of [126] the answer moved against could not under any circumstance form the basis of a suit in equity brought by the defendant William W. Crawford against the complainants, or either of them.

(c) That the matter so moved against, and each and every portion thereof, consists of irrelevant and redundant matter wholly immaterial.

(d) That the defendant, William W. Crawford, cannot be heard to litigate the matters so moved against on the ground that he took his mortgage subject to the lien of the mortgage given by the Washington Northern Railroad Company to Mississippi Valley Trust Company, as appears from paragraph II of his answer, and subject to the mortgage given by the Oregon-Washington Timber Company to Mississippi Valley Trust Company, and now held by complainants, as appears by paragraph III of the said affirmative answer; and for the further reason that

the setoff or counterclaim undertaken to be set up in his answer is available only to the Washington Northern Railroad Company; and for the further reason that the rights of the defendant, William W. Crawford, attach subsequent to the transactions complained of.

Complainants also move the Court to strike out:

I.

The eighth paragraph of the said answer.

II.

The ninth paragraph of the said answer.

III.

The tenth paragraph of the said answer.

Complainants move the Court to strike out the said portions so moved against, and each and every portion thereof, and the defense by way of setoff and counterclaim undertaken [127] to be pleaded by the defendant, William W. Crawford, therein, on the following grounds, to wit:

(a) That the matter so moved against by complainants, and each and every portion thereof, is irrelevant, redundant, and immaterial.

(b) That the matter so moved against, and every portion thereof, is not germane to this suit and improper to be litigated herein.

(c) That the matter moved against, and every portion thereof, is insufficient and inadequate to constitute the subject matter of an independent suit in equity by the defendant, William W. Crawford, against the complainants, or either of them.

(d) That the matter moved against if available to anyone is available only to Washington Northern Railroad Company.

(e) That the defendant, William W. Crawford, cannot be heard to set up the matters and things so moved against for the reason that his answer wholly fails to show that at the time when the transactions complained of took place the said William W. Crawford had any rights whatever in the premises, and for the further reason that the mortgage of the defendant, William W. Crawford, was expressly taken subject to the mortgage given by the Washington Northern Railroad Company to Mississippi Valley Trust Company, as appears from paragraph II of the affirmative answer of the said defendant, and subject to the mortgage given by the Oregon-Washington Timber Company to Mississippi Valley Trust Company, and now held by complainants, as appears from paragraph III of the said answer. [128]

(f) The claim by way of setoff undertaken to be alleged in the portion of the answer so moved against is cognizable at law and not in equity, and there is no allegation of insolvency of the parties responsible for the misuser of funds of the Washington Northern Railroad Company.

F. A. HUFFER,
HUFFER & HAYDEN, and
SNOW & McCAMANT,
Solicitors for Complainants.

(Acceptance of service.)

(Filed March 4, 1914.) [129]

Order (to Strike from Answer of Crawford).

This cause came on regularly for hearing on the 9th day of March, 1914, upon the motion of complain-

ants to strike from the amended answer of the defendant, W. W. Crawford, trustee, certain portions thereof, complainants appearing by Messrs. Snow & McCamant and Huffer & Hayden, their solicitors, and the defendant, W. W. Crawford, trustee, appearing by his solicitors, Messrs. Kerr & McCord, and the Court having on said day heard the argument of counsel and taken said motion under advisement and now being fully advised in the premises.

IT IS ORDERED that the following portions of the amended answer of the said defendant, W. W. Crawford, trustee, be and the same are hereby stricken from said amended answer, to wit:

All that portion of paragraph V of the second affirmative answer of the said defendant contained in his amended answer from the beginning of the second line on the thirty-ninth page to the conclusion of the said paragraph, the portion hereby stricken beginning with the line reading as follows: "That the resolutions adopted by the Board of" and ending with the end of the fifth paragraph.

Also all of paragraphs six (6), seven (7), eight (8), nine (9) and ten (10) of the second affirmative defense of said amended answer, to which order and ruling the defendant, W. W. Crawford, trustee, excepts and his exception is allowed.

Done in open court this 31st day of March, 1914.

EDWARD E. CUSHMAN,

Judge. [130]

(Filed Mar. 31, 1914.)

**Motion (to Strike from Cross-complaint of
Crawford).**

Come now the Mississippi Valley Trust Company and Union Trust Company, complainants in the original case, and pursuant to permission granted by order of Court made and entered on the 8th day of June, 1914, move the Court to strike out the following portions of the cross-complaint of William W. Crawford, to wit:

I.

Paragraph VII of the cross-bill.

II.

All that portion of paragraph XV beginning on line nineteen of page twenty-four with the words "that the resolution adopted," down to and including the end of the said paragraph.

III.

Paragraph XVI of the said cross-bill.

IV.

Paragraph XVII of the said cross-bill.

V.

Paragraph XVIII of the said cross-bill.

The original complainants aforesaid move the Court to strike out each and every of the portions so moved against, and the allegations by way of setoff and counterclaim contained therein, on the following grounds, to wit:

(a) That the matters pleaded in the said portions of the cross-bill are not germane to this suit, and not proper to be litigated herein.

(b) That the matters set up in the portions of

the cross-bill moved against could not under any circumstances form the basis of a suit in equity brought by William W. Crawford against [131] the Mississippi Valley Trust Company and the Union Trust Company, or either of them.

(c) That the matters so moved against, and each and every portion thereof, consist of irrelevant and redundant matter wholly immaterial.

(d) That William W. Crawford cannot be heard to litigate the matters so moved against on the ground that he took his mortgage subject to the lien of the mortgage given by Washington Northern Railroad Company to Mississippi Valley Trust Company, and subject to the mortgage given by Oregon-Washington Timber Company to Mississippi Valley Trust Company, and now held by these complainants as will fully appear from paragraph IX of the said cross-bill.

(e) That William W. Crawford cannot be heard to litigate the matters so moved against for the reason that the matters therein set up, if proper to be litigated at all, are available only to the Washington Northern Railroad Company, and not to the said William W. Crawford.

(f) That the matters undertaken to be litigated in and by the portions of the cross-bill moved against are not available to the said William W. Crawford for the reason that his rights, if any, did not attach until subsequent to the transactions complained of.

(g) The claim undertaken to be set up in the portions of the answer moved against is cognizable at law and not in equity, and the cross-bill contained

no allegation of the insolvency of the parties mentioned in paragraph VII of the said cross-bill.

SNOW & McCAMANT,

HUFFER & HAYDEN,

Solicitors for Mississippi Valley Trust Company and
Union Trust Company.

(Filed June 18, 1914.) [132]

[Title of Court and Cause.]

**Order (to Strike from Cross-complaint of
Crawford.)**

This cause coming on to be heard on the motion of Mississippi Valley Trust Company and Union Trust Company to strike out portions of the cross-bill of William W. Crawford, the said moving parties appearing by Wallace McCamant of their solicitors, and the said William W. Crawford appearing by E. S. McCord of its solicitors, and the Court being now fully advised thereon: [133]

IT IS CONSIDERED, ORDERED AND ADJUDGED that the said motion be and it is hereby allowed, and that the following portions of the said cross-bill be and they are hereby stricken out.

I.

Paragraph VII of the cross-bill.

II.

All that portion of paragraph XV beginning on line nineteen of page twenty-four with the words "that the resolutions adopted," down to and including the end of the said paragraph.

III.

Paragraph XVI of the said cross-bill.

IV.

Paragraph XVII of the said cross-bill.

V.

Paragraph XVIII of the said cross-bill.

VI.

The said William W. Crawford is allowed an exception to the ruling of the Court.

EDWARD E. CUSHMAN,
Judge.

(Filed June 18, 1914.) [134]

[Title of Court and Cause.]

Memorandum of Decision, Filed February 13, 1915.
CUSHMAN, District Judge.

A re-examination of the question in issue convinces me of the correctness of the former ruling herein on the motion to strike. (212 Fed. 776.) It is not deemed necessary to again state at length the transactions concerning the various mortgages and bond issues involved.

It is not necessary to determine whether the \$400,000 of the railroad bonds, as acquired by the timber company before their sale by it to the railroad company, as collateral to the timber company's bonds, also sold, were of equal rank with the \$600,000, sold and delivered by the trustee. Nor is it necessary to determine, when the \$400,000 of the railroad company's [135] bonds were transferred by the timber company to the railroad company, whether that transaction will be considered as tantamount to their payment and cancellation, or—while subject to reissue—as affecting a reduction in

their rank, rendering them subject to the \$600,000 of bonds so sold and delivered.

The reason that it is not necessary to determine these questions is that the mortgage of the railroad company to the Mississippi Valley Trust Company, originally securing them, provided that it should cover all after acquired property:

“This grant is intended to include and shall include all of the franchises, contracts, rights of way, easements, privileges, traffic agreements, rolling stock, cars and engines now owned by said Company or which may hereafter be acquired by it; and also all rents, incomes, tolls and profits accruing and to accrue from its said business.

“It is the intention of these presents and it is hereby agreed, that all future acquired property, real or personal or mixed, including all future extensions, improvements or betterments of the property hereafter acquired by said Company, shall be as fully embraced within the provisions hereof, and subject to the lien hereby created for securing payment of all of said bonds, together with interest thereon, as if the said property were now owned by said Company and were specifically mentioned herein.

“Also all real property, timber and timber rights, and rolling stock of the Railroad Company of every kind and description now owned or hereafter acquired and wherever situate, and all lands, tenements, hereditaments, buildings,

structures, warehouses, workshops, mills, plants and fixtures; all machinery, engines and boilers, all documents, deeds, timber contracts and leases, maps, surveys, inventories and papers relating to the real estate and timber rights and contracts conveyed hereby, now owned or hereafter acquired; and all rents, issues, and profits, earnings, and income from the property hereby conveyed; it being the intention hereby to convey, and said Railroad Company does hereby convey, transfer and assign, all property of the above kind, nature and description, which it now owns and all which it may hereafter own or acquire in any manner.”

This language sufficiently shows an intention to include such after acquired property as these bonds coming to the railroad company from the timber company. In the very nature of the case, the exact description of property, which, [136] in the course of events, will be acquired by a mortgagor, cannot be foreseen and it would be unreasonable to require such a degree of prescience as would be necessary to enable the parties to such a mortgage to exactly describe it in advance of its acquirement.

But whether this would be a rule justified in all cases, in the present case it is clearly so, for, on the same date that the railroad mortgage was given, and as a part of the same, general transaction, it was agreed that the \$400,000 of railroad bonds should be transferred to the timber company and retransferred by the timber company to the railroad company as collateral security for a like amount of

bonds of the timber company. In such agreement it is expressly recited that this retransfer is to be made

“as a further consideration or the sale to us (that is the Timber Company) of said One Million Dollars (\$1,000,000) par value of your (the Railroad Company’s) bonds and without any new or further consideration. * * * ”

From this it appears that the railroad company obtained this \$400,000 of its own bonds back as part consideration for the entire issue. They were, therefore, property coming to it as direct proceeds from the sale of its bonds and it must, ordinarily, be presumed that after acquired property purchased by the bonds themselves is to be covered by the mortgage, where language such as occurs in this instance is used. At any rate, a clear expression of an intention to the contrary would be required to warrant a ruling otherwise.

If it was the intention that these \$400,000 of railroad bonds should pass under the Crawford mortgage, free from the lien of the first mortgage, no good reason appears why [137] they were not withdrawn from the custody of the Mississippi Valley Trust Company and delivered to the trustee under the Crawford mortgage when the latter was executed.

It has been recognized that there is a stronger presumption, where a railroad or like corporation is concerned, that its property is intended to pass as a

whole, than in the case of an ordinary mortgagor.

Jones on Mortgages, vol. 1, sec. 167;

Jones on Corporate Bonds, etc., secs. 95, 96 and 97.

Not only is the intention shown in this first mortgage to cover such after acquired property, but an intention is also shown in the Crawford mortgage to recognize the facts that the prior mortgage does cover and include such property and that the latter—the Crawford mortgage—shall be subject to the other in such particular.

The following appears in that mortgage, but is is not the only recital warranting a like construction:

“ * * * the Railroad Company does hereby further sell, assign, pledge, transfer and set over to the Trustee (a) said \$400,000 second mortgage bonds of the Timber Company; (b) *the said \$1,000,000 first mortgage bonds of the Railroad Company as they are from time to time released and delivered, or releaseable and deliverable*, by the said Mississippi Valley Trust Company under the terms and provisions of the said first and second mortgage deeds of trust, respectively, of the Timber Company. * * *

“ * * * it is hereby expressly declared that the lien of this indenture *on the properties* of the Timber Company and the Railroad Company is subject to the lien of those two certain first and second mortgage deeds of trust executed by the Timber Company and of that certain mortgage deed of trust executed by the Railroad Company to the Mississippi Valley Trust Company, Trustee, as herein-

before set forth, *as to all the property covered by and to the extent* stated in said respective mortgage deeds of trust; and all property mortgaged or pledged to the said Mississippi Valley Trust Company, Trustee, under said mortgage deeds of trust, *and any and all such shares of stock, bonds, notes, or other obligations or securities* [138] *delivered* to said Trustee under or pursuant to or in connection with said mortgage deeds of trust, shall, be held, subject only to the prior lien thereof, subject to the lien and charge of this indenture for the security of the notes issued hereunder—all with the same force and effect as if the said property, shares of stock, bonds, notes and other obligations and securities had been and were specifically included and described in the granting and pledging clauses of this indenture.” (The italics are the Court’s.)

There are no equities in the present case which would qualify, in any way, this conclusion; nor any reason why this interpretation, placed upon the mortgage and recognized by the subsequent mortgagee, should not obtain.

From whatever point the question is viewed, an intent is shown to make the security given for the Crawford mortgage upon the \$400,000 of the million issue of the first mortgage bonds of the railroad company subject to the \$600,000 sold and delivered by the Trustee.

The property referred to as the “Weist Logging Equipment” clearly passed to the Blazier Timber

Company, freed from any claim by the railroad company. The title to this property was never in the railroad company so as to render it subject to the after acquired property clause of the mortgage, and, if it were, it was, of course, taken subject to the right of recovery and forfeiture by the lessor.

27 CYC., pp. 1141 (e) and 1142.

No other reasonable conclusion can be reached than that the railroad company agreed with the lessor of the property and the Blazier Timber Company to turn the property over to the latter company, without a formal forfeiture by the lessor. The intimate relation existing between the railroad company and the Blazier Timber Company and its officers strengthens this conclusion and, under all the circumstances, [139] it would be inequitable to rule otherwise.

The mortgage of the Oregon-Washington Timber Company to the Mississippi Valley Trust Company contains the following:

“Also all real property, lands, timber and timber rights and rolling stock of the Timber Company of every kind and description now owned or hereafter acquired, and wherever situate. * * * ”

This language is sufficient to cover and include the after acquired timber lands of that company.

A reasonable attorney's fee to be allowed complainants is found to be 5% of the total amount found due for principal and interest upon entry of decree. Twenty-five Hundred Dollars is found to be a reasonable attorney's fee for William Crawford, cross-complainant.

Decree may be prepared in accordance with the foregoing. [140]

[Title of Court and Cause.]

Final Decree.

This cause having come on for final hearing upon the evidence taken by the respective parties, and the case having been duly argued and submitted by Messrs Wallace McCamant and Edward C. Wright on behalf of complainants, Mr. F. A. Huffer also appearing for complainants, and the cause having been argued and submitted on behalf of the defendant William W. Crawford, Trustee, by Mr. E. S. McCord, of his solicitors, a decree *pro confesso* having heretofore and more than thirty days prior to this date, been entered as to the defendants Washington Northern Railroad Company, Oregon-Washington Timber Company, and Blazier Timber Company;

IT IS NOW CONSIDERED, ADJUDGED AND DECREED that:

Complainant Mississippi Valley Trust Company is a corporation organized under the laws of the State of Missouri, with authority to take and administer the trust of the mortgages to it as trustee as hereinafter found and decreed, and at the time of the execution of the mortgages it was, and is now authorized to take and administer in the State of Washington the trust imposed by the said mortgages, and the complainant Union Trust Company at the time of the creation of the trust in it, and the naming of it as a cotrustee with the Mississippi Val-

ley Trust Company, as hereinafter found and decreed, was, and is, a corporation organized under the laws of the State of Michigan, with authority to take and administer in connection with the complainant Mississippi Valley Trust Company, the trust imposed by the mortgage of the defendant Oregon-Washington Timber Company of June 4, 1910, hereinafter found and decreed, and at the time of the naming of the said cotrustee it was, and is now, authorized to take and administer in the State of Washington the trusts imposed by the said mortgage of June 4, 1910. [141]

The defendants Washington Northern Railroad Company, Oregon-Washington Timber Company, and Blazier Timber Company at the time of the execution of the mortgages by said respective companies executed, hereinafter found and determined, were, and each is, a corporation organized under the laws of the State of Oregon and each was authorized at the time of the execution of the mortgages referred to, and is now authorized to transact business in the State of Washington, each having prior to the execution of the mortgages complied with the laws of the State of Washington for the transaction of business therein by foreign corporations, each having filed with the Secretary of State of the State of Washington a certified copy of its Articles of Incorporation and named a state agent therein, and each having paid its license fees for the transaction of business therein.

The defendant William W. Crawford, trustee, is a natural person and at the time of the execution of

the mortgage in his favor, hereinafter found and decreed, and at the time of the filing of the complainant's bill herein, was, and he is, a citizen and resident of the State of Illinois, residing in the city of Chicago therein.

Each of the parties to this cause has appeared herein by the respective solicitors of each who have filed in the course of the proceedings taken in the cause various pleadings and papers in behalf of the respective parties hereto.

Heretofore, and on June 4, 1910, the defendant railroad company executed and delivered to complainant Mississippi Valley Trust Company, as trustee, its certain deed of mortgage conveying and transferring to the trustee thereunder certain properties hereinafter described, and the same having been so executed as to entitle it to record, the same was on June 10, 1910, duly recorded in the office of the auditor of Skamania County, Washington, wherein the properties therein described were situated, in book "I" of Mortgages, pages 339 to 356, both inclusive; said mortgage was executed to secure 1000 bonds, numbered from 1 to 1000, both inclusive, and of the denomination of \$1000 each, dated as of June 4, 1910, and maturing on May 1st, 1928, 600 of the bonds, numbered 1 to 600, both inclusive, being by the railroad company duly negotiated and deposited with the Mississippi Valley Trust Company, as trustee, by way of collateral to a mortgage bond issue of the Oregon-Washington Timber Company of June 4, 1910, hereinafter found and determined, and 400 of the said bonds, numbered 601 to 1000, inclusive, were duly negotiated

to the Oregon-Washington Timber Company and by it duly assigned to the railroad company as collateral under a second mortgage bond issue by the timber company, as hereinafter found and determined. That the debt evidenced by the second mortgage bonds of the timber company has not been paid. That the interest of the railroad company in the said 400 railroad bonds immediately on its acquiring of the same became subject to the lien of the 600 railroad bonds then outstanding, and the said 400 railroad bonds could be, and were in fact, reissued by the railroad company only as inferior in dignity and subsequent in time of payment to the 600 bonds first negotiated and then outstanding. By the terms of the said bonds of the said railroad company and of the mortgage to secure the same, it was provided, among other things, that the railroad company should well and truly pay all of the said bonds, principal and interest, and pay and discharge all taxes and assessments which might be levied against any of the mortgaged property, including personal taxes which might be levied against itself, and should pay all premiums which might be exacted for any insurance upon any of the mortgaged property, and any and all taxes which might be levied or assessed against any of the bonds, or the holders thereof, for account of the said bonds, and it was likewise provided by the mortgage that if at any time default should be made by the railroad company in [142] the payment of any of its said bonds, taxes or like character of charges by the mortgage imposed upon said railroad com-

pany, and such default should continue for a period of thirty days after written notice by the trustee to pay the same, that then the trustee, in its discretion, might declare the principal of all of said bonds then outstanding at once due and payable, together with the accrued and unpaid interest thereon, and that thereupon the whole of the principal of said bonds, including the accrued and unpaid interest thereon, should at once become due and payable, anything in the terms of said bonds to the contrary notwithstanding; as likewise was it provided in and by the said mortgage that upon any foreclosure being made of the mortgaged premises, the principal of all bonds secured by the mortgage, if not already due and payable, should at once become due and payable, whether or not notice had been given declaring the principal due by reason of any default, anything in the bonds or in the said mortgage contained to the contrary notwithstanding, and it is now found and decreed that the said railroad company has defaulted in the payment of the interest upon the said bonds due by the terms thereof November 1, 1912, May 1, 1913, and has defaulted in all interest due upon the said bonds since the 1st day of November, 1912.

And on September 3, 1913, demand was duly made in writing, in accordance with the said mortgage, upon the railroad company for the payment of the several sums of money as to which it had defaulted in payment prior to said date, and that thereupon the complainants have declared the entire debt, principal and interest of the said mortgage

indebtedness, due and collectible.

By the terms of the said mortgage likewise, and of the first mortgage of June 4, 1910, of the Oregon-Washington Timber Company, hereinafter found and decreed, it was provided that in the event of a foreclosure the mortgaged property, described in each of said mortgages might be sold as an entirety, and it is now found and determined by the Court that the best interests of all parties interested in the said mortgages require that the property described therein should be sold as an entirety,

There is now due under said mortgage and mortgage bonds issued thereunder by said railroad company \$970,000 and interest at 6% per annum from May 1, 1912.

And on June 4, 1910, the Oregon-Washington Timber Company executed and delivered to the Mississippi Valley Trust Company, as trustee, its certain mortgage deed of trust conveying to the said Trust Company the properties hereinafter described as the properties of said Timber Company, which mortgage being so executed as to entitle it to record, was thereafter and on June 10, 1910, duly recorded in the office of the Auditor of Skamania County, Washington, in which county the said properties were situate, in book "I" of Mortgages, beginning at page 296, which said mortgage was executed to secure a bonded indebtedness by the said timber company determined to be issued in the aggregate sum of \$600,000, represented by bonds number from 1 to 600, both inclusive, of the denomination of \$1,000 each, the bonds being dated June 4,

1910, and maturing thereafter serially, the last of which bonds would by its terms become due November 1st, 1921, and the said bonds representing the said bonded indebtedness were by the said Timber Company duly negotiated, sold and delivered.

[143] By the terms of each of the said mortgages of the railroad company and the timber company, and by the terms of the said bonds issued thereunder, the said mortgage indebtedness drew interest at six per cent per annum from May 1, 1910, payable semi-annually on the first day of May and the first day of November of each year, and to each of the mortgage bonds issued under the same interest coupons were attached representing the interest to be paid thereon and all of the said bonds and interest coupons were by the terms thereof made payable in United States gold coin, and each of the said mortgages and of the bonds and bonded indebtedness to secure which the mortgages were executed were duly authorized by the unanimous vote of the stockholders of the respective corporations issuing the same and of the directors of said corporations, and the properties described therein and intended by the said mortgages to be described, were and are situate in Skamania County, Washington, and are hereinafter described.

By the terms of the said timber company mortgage it was, among other things, provided that the trustee thereunder might appoint a cotrustee by designating such cotrustee in writing and filing the written notice of such designation with the secretary of the timber company, and that when such

appointment should be made the trustee so named should be vested jointly with the said Mississippi Valley Trust Company with all title to the properties and assets conveyed and intended to be conveyed thereby as security, with all powers, duties and franchises described in the said mortgage deed, and on the 19th day of May, 1911, said Mississippi Valley Trust Company did in writing designate and appoint the co-complainant herein, Union Trust Company, a cotrustee under said mortgage, and the said instrument making such appointment was duly filed with the secretary of the timber company and was duly recorded in the Records of Deeds of Skamania County, Washington, in book "H" at page 178, on May 31, 1911, and at all times since May 19, 1911, the powers, duties, titles and franchises created by the said mortgage of the timber company have been held and exercised jointly by the two complainants herein, Mississippi Valley Trust Company and Union Trust Company. It was provided by said timber company mortgage likewise, and among other things, that from and after the 1st day of May, 1911, certain amounts of timber upon the lands of said defendant timber company (and the lands conveyed by the said mortgage were essentially timber lands) should be cut annually by the mortgagor company and that there should be paid into the hands of the trustee annually \$90,000 by way of sinking fund for the redemption of the mortgage indebtedness; that the timber company should regularly pay all taxes and lawful assessments which might be assessed or levied against the

property covered by the mortgage, and that a failure to pay the same should be deemed to be a default under the terms of the mortgage; that the mortgagor company should pay the several bonds and interest coupons as the same should mature under the mortgage, and that if default should be made by the timber company in the payment of interest as the same might mature, or in the payment of the sinking fund annually, as provided by the mortgage, or default be made in the payment of taxes and assessments against the properties, and if such default should continue for sixty days after written notice by the trustee, addressed to the timber company at its principal office, specifying the default complained of and demanding that the timber company perform its covenants, then that the Trustee, in its discretion, might declare the principal of all bonds then outstanding at once due and payable, together with all accrued and unpaid interest thereon; and it is now found that \$30,000 of the said mortgage indebtedness maturing May 1, 1912, and being [144] respectively for the bonds numbered 1 to 30, both inclusive, has been paid, together with the interest coupon due on said date, and all interest accruing thereon prior to said date, but that the timber company has failed and neglected to pay any sums toward the sinking fund provided for by the mortgage, except the sum of \$4,500 hereinafter found; has failed to pay the interest due on the principal debt on November 1, 1912, and May 1, 1913, and has failed to pay any interest maturing since

May 1, 1912, and likewise the taxes accruing thereon after the year 1911, and on September 3, 1913, demand was duly made in writing in accordance with the provisions of said mortgage, as hereinafter set out, upon the timber company for the payment of the several sums of money as to which it had defaulted in payment prior to the said date, and thereupon the complainants have declared the entire debt due, being the principal and interest of the said mortgage indebtedness.

It was provided by the mortgage likewise that upon any foreclosure being made of the mortgaged premises under the mortgage that the principal of all bonds secured thereby and then outstanding, if not already due and payable, should at once become due and payable, whether or not notice had been given declaring the principal due by reason of the default, anything in the bonds or mortgage contained to the contrary notwithstanding.

By the terms of the said timber company mortgage likewise it was provided that as fast as any principal bonds issued thereunder and the interest thereon was paid, a like amount of the bonds and of the interest coupons thereto attached of the railroad company should be surrendered to the railroad company, and it is now declared that payment having been made of bonds numbered 1 to 30, both inclusive, secured by the timber company mortgage and the interest coupons thereof, a like amount of bonds and coupons of the railroad company were in fact surrendered to the railroad company by the complainants, trustees.

It was provided likewise by the said mortgage of the timber company that defaults being made and continued as aforesaid the trustee might proceed to foreclose the said mortgage. And there is now due thereon the sum of \$570,000 and interest thereon at 6% per annum from May 1, 1912.

Thereafter and on June 4, 1910, likewise said the Oregon-Washington Timber Company executed a second mortgage to the Mississippi Valley Trust Company as trustee, of all and singular the property described in its first mortgage of June 4th, 1910, and of all and singular its ownership, right and title to \$400,000 par value of the six per cent first mortgage gold bonds of the Washington Northern Railroad Company, dated June 4th, 1910, and which by the terms of the said mortgage matured May 1, 1928. Said second mortgage likewise provided, and the second mortgage bonds issued thereunder so provided, that the mortgage debt should draw interest at six per cent per annum, payable semiannually, and by the terms of the mortgage security and of the bonds issued thereunder the bonds so issued were numbered from 1 to 400, both inclusive and matured serially, first maturity thereof beginning on May 1, 1922, and terminating May 1, 1928; and second mortgage bonds secured by said mortgage were negotiated by the timber company and delivered to the Washington Northern Railroad Company, and for the said second mortgage bonds of the timber company, aggregating \$400,000 and for considerations [145] running from the said timber company to the railroad company said first mortgage bonds of the railroad com-

pany of June 4, 1910, were issued, negotiated and delivered to the said timber company.

In the contract for the purchase and sale of said second mortgage bonds it was provided:

“As a further consideration for the sale to us of said One Million Dollars (\$1,000,000) par value of your bonds and without any new or further consideration, we agree to sell and deliver to you Four Hundred Thousand Dollars (\$400,000) par value six per cent (6%) gold bonds issued by us dated the first day of May, 1910, due serially Thirty Thousand Dollars (\$30,000) par value every six months, beginning May 1st, 1922, and ending May 1st, 1928, and secured by second mortgage on our lands and timber in Skamania County, Washington, and secured also by Four Hundred Thousand Dollars par value of the One Million Dollars par value of bonds now proposed to be purchased by us from you; said \$400,000 par value of our bonds so sold to you, however, or the proceeds of the sale thereof, to be used by you only for future extensions, betterments, or equipment to your railroad after the expenditure of the said sum of Five Hundred and Forty Thousand Dollars above mentioned.”

That the second mortgage bonds of the Timber Company and the 400 railroad bonds collateral thereto were not used for future extensions, betterments or equipments for the railroad, but the interest of the Washington Northern Railroad Company therein was assigned and transferred, as hereinafter set forth, to the defendant William W. Crawford,

Trustee, subject, however, to the paramount lien and interest of the holders of the 600 railroad bonds aforesaid.

It was provided by the said second mortgage likewise that the Timber Company would and should pay all taxes, of any and every nature and kind, levied upon its property mortgaged, and that from and after the date when it had agreed to make, or had made its last payment on account of the sinking fund provided for in its first mortgage of June 4, 1910, to secure its issue of first mortgage six per cent gold bonds, it would so long as anything remained due on the said mortgage cut and remove a sufficient amount of logs so that during each twelve months period \$45,000 of the proceeds derived from the sale of the said logs should be paid in as a sinking fund to redeem and discharge its said second mortgage bonds. And said mortgage being so executed as to entitle it to record, the same was duly recorded in the office of the Auditor of Skamania County, Washington, where the properties described in the mortgage were situated, in Book "I" of Mortgages, page 316 et seq.

The property described and conveyed and intended to be conveyed by the Railroad Company's first mortgage hereinbefore found, is as follows:

"That certain logging railroad extending from Prindle's Landing in Section 12, Township 1 North, Range 5 East of the Willamette Meridian and running thence through and over Sections 12, 1, 2, 11, 3, and 2, in said Township 1 North, Range 5 East; and thence [146] through and over Sections 35, 26, and 25 in Township 2 North, Range 5 East of

said Meridian; and thence through and over Sections 30 and 19 in Township 2 North, Range 6 East of said Meridian; and thence through and over Sections 24 and 13 in Township 2 North, Range 5 East of said Meridian, all in Skamania County, State of Washington.

Together with all spurs, switches, branches, and extensions thereof, being the same railroad heretofore owned by the Cape Horn Railroad Company. Together also with all of the franchises, contracts and rights of way, easements, privileges, traffic agreements, rolling-stock, cars and engines now owned by said company, or which may hereafter be acquired by it, and all rents, incomes, tolls and profits accruing and to accrue from its said business. Together also with all future acquired property, real or personal or mixed, including all future extensions, improvements or betterments of the property hereafter acquired by said company.

And among the said properties so transferred and conveyed are the following leases and rights of way in fee in and across certain lands in Skamania County in the State of Washington, more particularly described as follows:

All those certain rights of way, leases and rights of way in fee in and across certain lands in said Skamania County, in the State of Washington, and more specifically described as follows:

Twenty year lease from April 12, 1909, for railroad across East half Northeast quarter Section 25, Township 2 North, Range 5 East, Willamette Meridian.

Fifteen year lease from May 16, 1908, for railroad across East half Southeast quarter Section 3, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen year lease from May 16, 1908, for railroad across Southwest quarter Section 2, Township 1 North, Range 5 East, Willamette Meridian; and southwest quarter of Northwest quarter said Section 2.

Fifteen year lease from April 16, 1908, for railroad across Southeast quarter of Southeast quarter Section 23, Township 2 North, Range 5 East.

Right of way in fee 100 feet wide across West half Northwest quarter Section 25, Township 2 North, Range 5 East, Willamette Meridian.

Railroad right of way over Lot 2, Southeast quarter of Northwest quarter and South half of Northeast quarter Section 19, Township 2 North, Range 6 East, Willamette Meridian.

Fifteen year lease from June 10, 1910, for railroad across East half Northeast quarter Section 3, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen year lease from June 9, 1909, for railroad across Southeast quarter Section 26, Township 2 North, Range 5 East, Willamette Meridian. [147]

Fifteen year lease from June 13, 1910, for railroad across Southeast quarter Section 26, Township 2 North, range 5 East, Willamette Meridian.

Fifteen year lease from June 3, 1910, for railroad across Northwest quarter Northwest quarter Section 2, Township 1 North, Range 5 East; Southeast quarter Southwest quarter, and Northwest quarter Southeast quarter, and Southwest quarter Northeast

quarter Section 35, Township 2 North, Range 5 East.

Fifteen year lease from June 6, 1910, for railroad across East half Northwest quarter Section 35, Township 2 North, Range 5 East, Willamette Meridian.

Fifteen year lease from June 3, 1910, for railroad across Northeast quarter Southwest quarter Section 35, Township 2 North, Range 5 East.

Fifteen year lease from May 31, 1910, for railroad across Southeast quarter Section 2, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen year lease from May 31, 1910, for railroad across all shore and tide lands in front of Lots 1 and 2, Section 12, Township 1 North, Range 5 East, Willamette Meridian, and a certain portion of Lot 3 of said Section, in all a frontage of 71.50 chains along the meander line. . .

Fifteen year lease from June 3, 1910, for railroad across North half Northwest quarter Section 11, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen year lease from May 31, 1910, for railroad across South half Southwest quarter, Southwest quarter Southeast quarter, and Lot 1 in Section 1, and Lots 1, 2, 3, and 4, in Section 12, Township 1, Range 5 East, Willamette Meridian.

Fifteen year lease from May 31, 1910, for railroad across Northeast quarter Northwest quarter, Northwest quarter Northeast quarter Section 11, Southwest quarter Southwest quarter, Section 1 and Lot 1, in Section 12, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen year lease from June 3, 1910, for railroad

across Northwest quarter Northwest quarter Section 2, Township 1 North, Range 5 East; Southeast quarter Southwest quarter and Northwest quarter Southeast quarter and Southwest quarter Northeast quarter Section 35, Township 2 North, Range 5 East.

Fifteen year lease from June 2, 1910, for railroad across Northeast quarter Northwest quarter Section 2, Township 1 North, Range 5 East, Willamette Meridian.

Fifteen year lease from June 6, 1910, for railroad across West half Northeast quarter Section 23, Township 2 North, Range 5 East, Willamette Meridian.

Fifteen year lease from May 31, 1910, for railroad across Northeast quarter Section 26, Township 2 North, Range 5 East, Willamette Meridian. [148]

Fifty year lease from June 2, 1910, for railroad across Southwest quarter Northeast quarter, Northwest quarter Southeast quarter, North half Southwest quarter Section 25, Township 2 North, Range 5 East, Willamette Meridian.

Fifteen year lease from June 25, 1908, for railroad across Northwest quarter Northeast quarter Section 35, Township 2 North, Range 5 East.

Fifteen year lease from May 16, 1908, for railroad across Southwest quarter Northwest quarter and Southwest quarter Section 2, Township 1 North, Range 5 East, Willamette Meridian.

Right of way in fee 100 feet wide across West half Northeast quarter and East half Northwest quarter Section 23, Township 2 North, Range 5 East, Willamette Meridian.

Railroad right of way across Lot 2, Southeast quar-

ter Northwest quarter, and South half Northeast quarter, Section 19, Township 2 North, Range 6 East, Willamette Meridian.

Twenty year lease for railroad across East half Northeast quarter Section 25, Township 2 North, Range 5 East, Willamette Meridian.

Fifteen year lease from May 27, 1911, right of way across Northwest quarter Section 17, Township 2, Range 6.

All of which leases and grants of rights of way have been filed for record and are duly recorded in the office of the County Auditor of said Skamania County, Washington.

(2)

Also that certain tract of land beginning at Northwest corner Northeast quarter Section 35; thence East along the Section line between Sections 26 and 35, 10 chains; thence South parallel with center line of Section 35, 10 chains; thence West parallel with the North line of Section 35, 10 chains; thence North following subdivision line, 10 chains to beginning; all in Township No. 2 North, Range 5 East of the Willamette Meridian, in said Skamania County, Washington.

(3)

All and singular the rights of way, roadbed and bridges, easements, railway tracks, spurs, sidetracks, switches, sidings, terminals, shops, grounds, depots, stations, power houses and power machinery, locomotives, tenders, cars and other rolling stock and equipment, furniture, tools, and all implements, appendages and appurtenances to or used in connection

with said railroad in any manner whatsoever; and all property wheresoever situate now belonging to or in the possession of the Railroad Company, or which shall hereafter be by it acquired, constructed, or provided for use as a part of or for use upon or in connection with or by way of additions to or extensions or equipment of said railroad; together with all the reversions, remainders, revenues, rents, income, tolls, fares and profits thereof. [149]

(4)

All accounts due or to become due, bonds, mortgages, notes, liens, leases, easements, agreements, maps, surveys, licenses, immunities, rights, privileges, franchises and grants appertaining to or owned, held, enjoyed or at any time hereafter acquired by the Railroad Company in connection with its said railroad.

(5)

Any and all contracts and agreements with the Timber Company, the Blazier Company, and with any other corporation or corporations, associations, partnerships and individuals for the hauling of logs, cordwood or other timber products, and of supplies, materials, goods and merchandise of any and every kind and character, whether such contracts and agreements be now owned or made by the Railroad Company, or be at any time hereafter made or acquired by it, together with all rights, interests, claims, moneys, rentals or tolls conferred or granted by or acquired under, or due or to become due upon any or all of such contracts or agreements.

(6)

All property of every name and nature now owned or hereafter acquired, or at any time, and from time to time hereafter, by delivery or by writing of any kind for the purposes hereof, conveyed, pledged, assigned or transferred by the Railroad Company or anyone in its behalf to the Trustee, who is hereby authorized at any time and from time to time to receive any property as and for additional security, and also when and as hereinafter provided as substituted security, for the payment of the notes issued hereunder, and according to the terms hereof to hold and to apply any and all such property.

(7)

All of the railways, right of way, tracks, lines, extensions, additions, spurs, sidings, and any and all other property, real, personal and mixed, of every kind and description now owned by the Railroad Company or which, at any time, and from time to time hereafter, shall be purchased, acquired, constructed, or provided for use upon or in connection with or as additions to or branches or extensions of the railroad and property now owned by the Railroad Company or otherwise under its present powers or under powers or privileges that may hereafter be conferred upon it; and any and all the reversions, remainders, revenues, rents, profits, tolls and other income of such railroad and of any and all additions to and branches and extensions thereof; together with all and singular the equipment, rights, privileges, immunities and franchises now or hereafter appurtenant thereto or used in connection with the said

railway of the Railroad Company or any addition to or branch or extension thereof, whether now constructed or owned or hereafter constructed or acquired by the Railroad Company.

It was the true intent and agreement of the parties hereto that said indenture was to and did convey all of the property, real, personal and mixed of every kind and wheresoever situate, and all appendages and appurtenances thereto, and [150] all of the equities of redemption, reversions, interests, liens, franchises, rights, privileges, immunities, claims and demands, as well in equity as in law, then owned, possessed or enjoyed, and which might hereafter be in anywise acquired, owned, possessed or enjoyed by the Railroad Company, notwithstanding that the same was not particularly set forth in said indenture and is not hereinabove specifically described.

That said after-acquired property clause in the mortgage of the said defendant Railroad Company did cover and include the 400 railroad bonds hereinbefore referred to.

The property mortgaged, transferred and conveyed, and intended to be mortgaged, transferred and conveyed by the Timber Company is described as follows:

The East half of the Northeast quarter of Section 25; the North half of the North half of Section 24; the East half of the Northeast quarter and the North half of the Southeast quarter of Section 23; the East half and the East half of the West half and the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 14;

the whole of Section 13; the East half of Section 11; the Southeast quarter and the Southwest quarter of the Northeast quarter, and the Northeast quarter of the Northwest quarter, and the West half of the Northwest quarter and the Northwest quarter of the Southwest quarter, and the South half of the Southwest quarter of Section 12; the Southeast quarter of Section 2; the whole of Section 1, all in Township 2 North, Range 5 East, Willamette Meridian.

The Northwest quarter of Section 30; the Southwest quarter and the North half of the North half of Section 19; the whole of Section 18; the Southeast quarter of the Southeast quarter, and the Southwest quarter and the Southwest quarter of the Northwest quarter of Section 7; the Northwest quarter of Section 8; the Southwest quarter of the Southeast quarter and the Southwest quarter, and the Southeast quarter of the Northwest quarter and the West half of the Northwest quarter of Section 6; all in Township 2 North, Range 6 East, Willamette Meridian.

The North half of the Northeast quarter; the South half of the Southeast quarter of Section 34; the whole of Section 35; the South half and the Northeast quarter of Section 36; the South half of Section 25; the Southwest quarter, and the Southwest quarter of the Southeast quarter, and the Southwest quarter of the Northwest quarter of Section 26; the Northwest quarter of Section 24; the Southwest quarter of the Southeast quarter of Section 13, all in Township 3 North, Range 5 East, Willamette Meridian.

The whole of Section 31; the whole of Section 32; the whole of Section 28; the Northwest quarter of

Section 29; the Southwest quarter of Section 30; the Southwest quarter of Section 20; the Southeast quarter and the West half of Section 19; the whole of Section 18; the Southwest quarter of Section 17; the Southwest quarter of Section 8; all in Township 3 North, Range 6 East, Willamette Meridian. [151]

The total lands now owned by the Timber Company and above described, embracing about 10,800 acres, upon which there is shown by cruises of standard cruisers to be now standing timber in the aggregate amount of four hundred million feet.

And also the after acquired property, to wit:

The North half of the Northeast quarter of Section 24, Township 3, Range 5 East, and the South half of the North half of Section 19, Township 2 North, Range 6 East of the Willamette Meridian, in said Skamania County, Washington.

Also all real property, lands, timber and timber rights, and rolling stock of the Timber Company, of every kind and description now owned or hereafter acquired, and wherever situate, and all tenements, hereditaments, buildings, structures, warehouses, workshops, mills, plants and fixtures, all machinery, engines, and boilers, all documents, deeds, timber contracts and leases, maps, surveys, inventories and papers relating to the real estate and timber rights and contracts conveyed hereby, now owned or hereafter acquired, and all rents, issues and profits, earnings and income from the property hereby conveyed. Together also with all property of the above kind and nature and description held and owned by the Timber Company at the time of its said mortgage, or

which may at any time thereafter have been acquired or owned in any manner.

Together also with \$600,000 par value of the first mortgage six per cent gold bonds of the Washington Northern Railroad Company, dated June 4, 1910, maturing May 1, 1928, together with all rights attached to said bonds under that certain mortgage deed of trust executed by said Washington Northern Railroad Company, conveying to the Mississippi Valley Trust Company, as Trustee, all the property, real, personal and mixed, then owned or thereafter acquired by said Railroad Company to secure the payment of the aforesaid bonds.

That subsequent to the bringing of this suit on proceedings proper to be had therefor, H. E. Collins, as Receiver of the Washington Northern Railroad Company, secured title to the following described real property:

The East half of the Southeast quarter of Section 9; and the North half of the Northwest quarter of Section 15, all in Township 2 North, Range 6 East, Willamette Meridian, situate in Skamania County, Washington.

On March 1, 1912, the Washington Northern Railroad Company, the Oregon-Washington Timber Company, and the Blazier Timber Company, all of which said companies being then owned, dominated and controlled by the same set of people, and practically and in effect one company, pursuant to the unanimous resolution of the Stockholders and Board of Directors of the said companies, executed and delivered to the defendant, William W. Crawford,

Trustee, their mortgage deed of trust, whereby they transferred and conveyed to the said Trustee the property of the Railroad hereinbefore described and which prior thereto had been mortgaged to the Mississippi Valley Trust Company as Trustee, as hereinbefore found, under the mortgage of date June 4, 1910, and the property of the Timber Company which had theretofore been mortgaged under its first mortgage of June 4, 1910, to the Mississippi Valley Trust Company as Trustee, and which is hereinbefore described [152] and which has been mortgaged likewise by said Timber Company by its second mortgage of June 4, 1910, hereinbefore found, and the said Railroad Company, one of the mortgagors to said mortgage, undertook to, and did, assign to said Crawford, Trustee, as part security under said mortgage, \$400,000 of the second mortgage bonds of the Timber Company, issued under its said second mortgage, and \$1,000,000 first mortgage bonds of the Railroad Company as they should thereafter from time to time be released and delivered, or releaseable and deliverable, by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgage deeds of trust, respectively, of the Timber Company to said Mississippi Valley Trust Company. That the effect of the assignment of the railroad bonds so made was to assign the same subject to the prior lien and claim of the holders of the 600 railroad bonds first issued, and to postpone the rights of William W. Crawford, Trustee, in the railroad security until after the said 600 railroad bonds had been fully paid and discharged. And the said

Oregon-Washington Timber Company by said mortgage transferred and conveyed the timber lands and properties by the said Timber Company then held and owned, and hereinbefore described, together with all timber and timber rights, rights of way, easements, railroads, logs or logging roads, buildings, workshops, mills, plants, office and store buildings, fixtures, machinery, engines, boilers, rolling stock, teams, logging equipment then or thereafter located on said real estate or elsewhere, and then or thereafter acquired by the said Timber Company, together with the revenues, rents, incomes, tolls, fares and profits thereof.

All of such personal property covered by the foregoing description to be considered as fixtures and appurtenant to and constituting part of the real property of the Timber Company.

Also all accounts due or to become due, deeds, records, bonds, mortgages, notes, liens, leases, easements, agreements, maps, surveys, licenses, immunities, rights, privileges, franchises and grants, and all other property and property rights of whatever nature or character, real, personal or mixed, and wherever situate then, at the time of the execution of said mortgage, owned, held, possessed, or enjoyed by the Timber Company, or at any time thereafter acquired by it, and any and all rights or interest therein or thereto, and the reversions, remainder, rents, incomes, issues and profits thereof.

And by the Blazier Timber Company there was transferred and conveyed to said Crawford, Trustee, as security under the said mortgage, the follow-

ing described property then claimed by the Blazier Timber Company, to wit:

Lot 1, the East half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 7, and the Southwest quarter of Section 8 in Township 2 North, Range 6 East of the Willamette Meridian.

North half of Southwest quarter, Southeast quarter of Southwest quarter Section 9, Township 2 North, Range 6 East of the Willamette Meridian.

Southeast quarter Section 17, Township 2 North, Range 6 East of the Willamette Meridian.

Northeast quarter and West half Southeast quarter Section 9, Township 2 North, Range 6 East of the Willamette Meridian. [153]

Southeast quarter of Northeast quarter, Northeast quarter of Southeast quarter, West half of Southeast quarter Section 7, Township 2 North, Range 6 East of Willamette Meridian.

All timber and railroad right of way for twenty years on Northeast quarter Section 17, Township 2 North, Range 6 East of the Willamette Meridian.

Southeast quarter Section 17, Township 2 North, Range 6 East of the Willamette Meridian.

All timber on Northeast quarter, North half Northwest quarter, Southeast quarter Northwest quarter, and South half Section 16; the Northwest quarter of Section 17, Township 2 North, Range 6 East of the Willamette Meridian. Also all the timber on the West half of the Northeast quarter and the East half of the Northwest quarter of Section 23, Township 2 North, Range 5 East. Also a right of way over said

Northwest quarter of Section 17, Township 2 North of Range 6 East of the Willamette Meridian.

Together with all timber and timber rights, rights of way, easements, railroads, logs or logging roads, buildings, workshops, mills, plants, office and store buildings, fixtures, machinery, engines, boilers, rolling stock, teams, logging equipment at the time of the mortgage or at any time thereafter, located on the said real estate, together with all appendages, appurtenances, reversions, remainders, revenues, rents, income, tolls, fares and profits thereof, and all accounts due or to become due, deeds, bonds, books, records, mortgages, notes, liens, leases, easements, agreements, maps, surveys, licenses, immunities, rights, privileges and grants, and all other property and property rights of whatsoever character and nature, real, personal or mixed, and wheresoever situated, then owned, possessed or enjoyed by the said Blazier Timber Company, or at any time thereafter acquired.

And said mortgage to Crawford, Trustee, having been so executed as to entitle it to record, the same was duly recorded in the office of the Auditor of Skamania County, Washington, on the 9th day of April, 1912, in Book "L" of Mortgages, beginning at page 68, and in Book "O" of Chattel Mortgages, at page 144. Said mortgage recited the fact of the execution of the mortgage by the Railroad Company of June 4, 1910, to the Mississippi Valley Trust Company and of the issuance of mortgage bonds thereunder to the aggregate amount of \$1,000,000 and the execution of the first mortgage by the Timber Com-

pany of June 4, 1910, and of the issuance and negotiation of \$600,000 of mortgage bonds thereunder, and the execution of the second mortgage by the Timber Company of June 4, 1910, and the issuance and negotiation of \$400,000 of mortgage bonds thereunder, and recited and declared that the said mortgage to the said Crawford, Trustee, was executed and taken subordinate to and subject to the said mortgages. Said mortgage to said Crawford, Trustee, was executed and delivered to secure payment of \$425,000 and interest thereon at six per cent per annum, payable semi-annually on the first days of March and September each year, the installments of interest being evidenced by appropriate coupons attached to various notes referred to in the mortgage as the "first and general lien six per cent gold notes," numbers 1 to 425, both inclusive of the denomination of \$1,000 and payable serially, all bearing date March 1, 1912, with due dates in part beginning September 1, 1912, the last notes maturing March 1, 1917, which were negotiated and put out by the mortgagor companies. And by the terms of the said mortgage to Crawford, Trustee, the mortgagors covenanted and agreed to pay the mortgage notes as and when the same fell due and the [154] interest thereon, evidenced by the interest notes attached thereto, and covenanted and agreed to pay all taxes of every kind assessed or levied against the properties described in the mortgage, or against the mortgage note holders arising by their ownership of the notes and it was provided by the mortgage likewise that upon any default being made in the payment of the principal

of the notes as and when the same fell due, or any default in the payment of the interest thereon as and when the same fell due, and if such default should continue for a period of sixty days after written notice thereof to the mortgagors by the trustees, or to the companies or the trustees by the holders of at least five per cent of the notes then outstanding, then and in that event the trustees might declare as immediately due and payable all of the said principal notes, and the interest thereon, anything in the notes or the mortgage to the contrary notwithstanding. As likewise was it provided by the mortgage that upon any foreclosure of the said mortgage, for any moneys due thereunder, and of sale of the property described in the mortgage, the principal of all notes outstanding and secured by the mortgage should immediately become due and payable, if not previously due, anything in the notes or the mortgage to the contrary notwithstanding. As it was provided likewise that upon any sale of the properties described in the mortgage, all of the property described therein might be sold as an entirety.

That \$30,000 has been paid on account of the principal of the said Crawford mortgage, but \$395,000 of the principal of the said debt is still unpaid, and the interest accruing from and after September 1, 1912, is also unpaid. That the interest provided for in and by the terms of the said mortgage is interest at the rate of six per cent per annum.

And it is now found and determined that the first mortgage hereinbefore referred to of the Washington Northern Railroad Company to the Mississippi

Valley Trust Company, Trustee, of June 4, 1910, upon which there is due the sum of \$970,000 and interest at six per cent per annum from May 1, 1912, and the first mortgage of the Oregon-Washington Timber Company, to the Mississippi Valley Trust Company, Trustee, of June 4, 1910, upon which there is due \$570,000 and interest at six per cent per annum from May 1, 1912, and the second mortgage of the Oregon-Washington Timber Company to the Mississippi Valley Trust Company, Trustee, of June 4, 1910, on which there is due the sum of \$400,000 and interest from the first day of May, 1912, were all executed and designed, and the proceeds realized, or to be realized under either or all of the said mortgages were designed as security for one debt, to wit, the indebtedness of the Oregon-Washington Timber Company under its first mortgage of June 4, 1910, the amount due upon which is \$570,000 and interest at six per cent per annum from May 1, 1912, and the mortgage executed and delivered by the Washington Northern Railroad Company, the Oregon-Washington Timber Company, and the Blazier Company to William W. Crawford, Trustee, and the proceeds realized and to be realized thereunder, were designed as security for a single debt, to wit, the indebtedness referred to in the said mortgage, upon which there is due and unpaid the sum of \$453,591.67 and interest from the 20th day of February, 1915, at six per cent per annum, which said mortgage to said Crawford, Trustee, it is now found and determined is a second mortgage, subsequent and subordinate to the other three mortgages hereinbefore found and en-

titled the trustees thereof to take and receive, and [155] apply upon the said mortgage debt all surplus proceeds of sale which may be realized from the sales of the properties mentioned and described in either of the said three mortgages hereinbefore found, such proceeds to be first applied upon the mortgage debt hereinbefore found from the Oregon-Washington Timber Company of June 4, 1910, upon which there is due, as hereinbefore found the sum of \$570,000 and interest at six per cent per annum from May 1, 1912, save and excepting that under the said mortgage to the said Crawford, Trustee, there is a first lien upon all and singular the timber lands of the Blazier Timber Company described therein.

That subsequent to the execution of the mortgage to William W. Crawford, Trustee, of date March 1, 1912, the Blazier Timber Company acquired by bill of sale from the Wiest Logging Company logging equipment described as follows, to wit:

LOGGING EQUIPMENT.

- 2—10x13 Humboldt Yarding Engines with 60 inch Boilers.
- 1—10x12 Washington Iron Works Yarding Engine with Sled.
- 2—10x13 Humboldt Yarding Engine 66 inch Boilers with Sleds.
- 2—11x13 Mogul Roving Engine 66 inch Boilers with Sleds.
- 1—10x13 Humboldt Yarder with 66 inch Boiler and Sled.
- 3—7x10 Loading Engines with Sleds.
- 5000 ft. 1½ inch Water Pipe at 4½ cts.

- 2—Duplex Pot Valve Pumps with Boilers and Fixtures.
- 1—Small Steam-pump with Fixtures.
- 3—Large Water-tanks.
- 2—Blacksmithing Outfits with Shop and Tools complete,—and iron and steel on hand.
- 60—Trip Blocks at \$9.00.
- 40—Bouse Yarding Blocks at \$18.00.
- 11—Head Blocks at \$22.50.
- 2—14 inch Willamette Butt Chain Blocks at \$40.00.
- 6—16 inch Willamette Butt Chain Blocks at \$60.00.
- 3—18 inch Columbia Butt Chain Blocks at \$80.00.
- 4—New Lines each 1600 feet long, \$650.00 each.
- 4—Main Lines on Donkeys, worn some, \$325.00 each.
- 5—New Trip Lines, each 4000 feet long, \$450.00 each.
- 2—Trip Lines, worn some, \$225.00 each.
1000 feet New Yarding Line.
500 feet Choker Line.
- 32—Chokers.
- 32—Yarding Lines.
- 7—Loading Lines, 200 feet each, at \$30.00.
Dishes, Cook-house, Stoves, Cooking Utensils, Groceries and Commissary Goods on hand.
- 3—Cook-houses.
- 8—Bunk-houses.
- 200—Springs and Mattresses at \$4.00.

- 1—Commissary Building.
- 4—Double Loading Blocks at \$28.50.
- 4—Single Loading Blocks at \$18.50.
- 7—Jack Screws at \$40.00.
- 15—Butt Chains at \$20.00.
- 40—Choker Hooks at \$5.25.
- 30—Yarding Hooks at \$2.50. [156]

LOGGING EQUIPMENT (Continued):

- 9—Set of Loading Hooks at \$10.00.
- 60—Choker Sockets at \$2.75.
- 6—Pair Grabs at \$7.50.
- 3—Stump Rollers.
- 75—Saws at \$6.00.
- 75—Sledges at \$4.00.
- 120—Bucking Wedges at \$1.50.
- 40—Falling Wedges at \$2.50.
- 8—Doz. Axes at \$12.00.
- 6—Doz. Shovels at \$12.00.
- 6—Doz. Mattocks at \$7.50.
- 1—Extra Steel Yarding Drum for 10x13 Humboldt Yarder.

One Ton of Powder and 500 Caps on hand.

Engine, Lubricating and Coal Oil on hand.

That the said logging equipment thereupon became subject to the lien of the mortgage given to the defendant William W. Crawford, trustee, under the after-acquired property clause in the said mortgage. That a portion of the said equipment, consisting of 11 Donkey-engines, is now in the hands and under the control of H. E. Collins, receiver of the Washington Northern Railroad Company.

That it is provided in the mortgage given by the

Washington Northern Railroad Company, of date June 4, 1910, and in the mortgage given by the Oregon-Washington Timber Company, of date June 4, 1910, and by the mortgage given to the defendant William W. Crawford, of date March 1, 1912, that the proceeds of any sale of the respective properties described in the said mortgages and given as security for the debts named therein should be applied to the payment of accrued interest before the payment of the principal of the debt in each case secured.

That it was provided in each of the said mortgages that in case a suit should be brought to foreclose either or any thereof that in each case the mortgagors would pay to the mortgagee, in addition to the debt specified in the said mortgage such sum as the Court should adjudge reasonable as attorneys' fees for the foreclosure of said mortgage. That the sum of \$33,250 is a reasonable attorney's fee to be allowed complainants for the services of their attorneys in this suit. That the sum of \$2500 is a reasonable sum to be allowed the defendant, William W. Crawford, trustee, for the services of his attorney in foreclosing the mortgage executed in favor of the defendant, William W. Crawford, trustee, in this suit.

That it was also provided in and by the mortgage given by the Washington Northern Railroad Company and by the mortgage given by the Oregon-Washington Timber Company, under date of June 4, 1910, that in the event of a foreclosure of either of the said mortgages the mortgagor would in each case pay to the trustee such sum as should be adjudged reasonable for the services of the trustee in

conducting said foreclosure, and in protecting the interest of the bondholders therein. That the sum of \$1500 is a reasonable sum to be allowed the complainants for their services as trustees.

That at the inception of this suit at the instance of complainants, H. E. Collins was duly appointed receiver of the [157] Washington Northern Railroad Company, and receiver of the Oregon-Washington Timber Company. That upon proceedings proper to be had therefor the said receiver has issued receiver's certificates as receiver of the Washington Northern Railroad Company in the aggregate sum of \$16,500, and that it will be necessary for him to issue certificates in the approximate sum of \$3,000 additional for the payment of taxes about to become due and payable on the properties of the Washington Northern Railroad Company. That on proceedings proper to be had therefor the said H. E. Collins as receiver of the Oregon-Washington Timber Company has issued and sold receiver's certificates of the aggregate amount of \$8,500, and that it will be necessary for him to issue and sell additional receiver's certificates to the amount of approximately \$2,000 for the payment of taxes about to become due and payable on the properties of the Oregon-Washington Timber Company. That the said receiver's certificates issued and to be issued are in each case a prior and preferred lien on the properties of the Washington Northern Railroad Company and the Oregon-Washington Timber Company, respectively.

IT IS NOW CONSIDERED, ADJUDGED AND DECREED: That the first mortgage given by the

Oregon-Washington Timber Company on the 4th day of June, 1910, to Mississippi Valley Trust Company and which is now held by Mississippi Valley Trust Company and Union Trust Company, be and it is hereby foreclosed.

IT IS FURTHER CONSIDERED, ADJUDGED AND DECREED: That the mortgage given by the Washington Northern Railroad Company to Mississippi Valley Trust Company on the 4th day of June, 1910, be and it is hereby foreclosed.

IT IS FURTHER CONSIDERED, ADJUDGED AND DECREED: That the mortgage given by the Oregon-Washington Timber Company, Washington Northern Railroad Company and the Blazier Timber Company, to the defendant William W. Crawford, trustee, on the 1st day of March, 1912, be and it is hereby foreclosed.

IT IS CONSIDERED, ADJUDGED AND DECREED: That within thirty days from this date the Washington Northern Railroad Company pay into the registry of this court the sum of \$16,500, with accrued interest thereon, and such additional sum as shall be necessary to take up and pay all receiver's certificates issued by the receiver of the Washington Northern Railroad Company. That within thirty days from this date the Oregon-Washington Timber Company do pay into the registry of this court the sum of \$8,500 with accrued interest thereon, and such additional sum as shall be necessary to take up and discharge the receiver's certificates issued by the receiver of Oregon-Washington Timber Company.

IT IS FURTHER CONSIDERED, ADJUDGED AND DECREED: That within thirty days from this date the Oregon-Washington Timber Company and the Washington Northern Railroad Company do pay to complainants the full sum of \$570,000, with interest thereon at the rate of six per cent per annum from May 1, 1912, and the further sum of \$33,250, as an attorney's fee adjudged to be due and owing from the said mortgagor defendants to complainants. [158]

IT IS FURTHER CONSIDERED, ADJUDGED AND DECREED: That within thirty days from the date of this decree the defendants, Oregon-Washington Timber Company, Washington Northern Railroad Company, and Blazier Timber Company, do pay to the defendant William W. Crawford, trustee, the sum of \$453,591.67, with interest from February 20th, 1915, at the rate of six per cent per annum.

IT IS FURTHER ADJUDGED AND DECREED: That in default of such payment a certified copy of this decree be furnished to B. A. Cowl, who is hereby named Master in Chancery, and charged with the duty of selling the properties hereinbefore described.

IT IS CONSIDERED, ADJUDGED AND DECREED: That the said Master in Chancery do proceed, in default of the payments hereinbefore specified, to sell the properties of the Oregon-Washington Timber Company hereinbefore specified, both those originally described in the mortgage of the said Oregon-Washington Timber Company and those after acquired by it and hereinbefore listed. Said

sale to be in the manner prescribed by law for the sale of real property sold on execution within the State of Washington, and the said sale to be made at the door of the Court-house at Stevenson, Skamania County, Washington.

IT IS CONSIDERED, ADJUDGED AND DECREED: That the proceeds of the said sale be applied:

1. To the payment of the costs of the said sale.
2. To the payment of the certificates of the receiver of the Oregon-Washington Timber Company.
3. To the payment to Wallace McCamant, solicitor for complainants, of the sum of \$33,250, the attorney's fee adjudged to be due him for services rendered by him in this cause.
4. To the payment of the interest coupons maturing November 1, 1912, on the bonds of the Oregon-Washington Timber Company, of date June 4, 1910.
5. To the payment of the mortgage debt aforesaid, to wit, the sum of \$570,000 with interest thereon at the rate of 6% per annum from May 1, 1912, less the face of the coupons maturing November 1, 1912.
6. To the payment to E. S. McCord, solicitor for the defendant, William W. Crawford, trustee, of the sum of \$2,500, the attorney's fee allowed him for the foreclosure of the Crawford mortgage.
7. To the payment to William W. Crawford, trustee, of the sum of \$453,591.67, with interest from the 20th day of February, 1915.

8. The overplus, if any, to be paid into court to be distributed in such manner as the Court may direct.

IT IS CONSIDERED, ADJUDGED AND DECREED: That any funds in the hands of the Receiver on the day of sale, over and above that required to pay his outstanding indebtedness, be paid by him to the purchaser at the said sale, and that the purchaser at the said sale take the said property charged with the burden of paying any unpaid obligations of the said receiver, but that the [159] purchaser take the said property free from all other liens and incumbrances, and free from all claims of all kinds and descriptions on behalf of the several parties to this suit, and that the purchaser take such title to the said property as was had by the Oregon-Washington Timber Company on the 4th day of June, 1910, together with all title by it since acquired. That the purchaser be let into possession of the said premises, and that when the period for redemption has expired that a deed be executed to the purchaser, or his successor in interest, provided the property be not redeemed in the manner provided by the laws of the State of Washington.

In case the purchase price of the properties of the Oregon-Washington Timber Company shall be inadequate to the payment of the several sums of money hereinbefore specified:

IT IS CONSIDERED, ADJUDGED AND DECREED: That the Master in Chancery shall then sell, in the same manner and in accordance with the requirements of the laws of Washington governing

the sale of real property, all of the properties of the Washington Northern Railroad Company hereinbefore described, including as well the properties originally listed in its mortgage as the properties acquired by it subsequent thereto.

IT IS CONSIDERED, ADJUDGED AND DECREED: That the proceeds of the sale of the said properties of the Washington Northern Railroad Company be devoted as follows:

1. To the payment of the costs of the said sale.
2. To the payment of the certificates of the receiver of the Washington Northern Railroad Company.
3. To the payment to Wallace McCament, solicitor for complainants, of the sum of \$33,250, the attorney's fee adjudged to be due him for services rendered by him in this cause.
4. To the payment of the coupons maturing November 1, 1912, on the bonds of the Washington Northern Railroad Company, of date June 4, 1910, numbered 1 to 600, less the 30 bonds which have been paid up and surrendered to said railroad company.
5. To the payment of the mortgage debt aforesaid, to wit, the sum of \$570,000 with interest thereon at the rate of 6— per annum from May 1, 1912, less the face of the coupons maturing November 1, 1912, on bonds 1 to 600, less the 30 bonds which have been paid and retired.
6. To the payment to E. S. McCord, solicitor for the defendant, William W. Crawford, trustee, of the sum of \$2,500, the attorney's fee

allowed him for the foreclosure of the Crawford mortgage.

7. To the payment to William W. Crawford, trustee, of the sum of \$453,591.67, with interest from the 20th day of February, 1915.
8. The overplus, if any, to be paid into court, to be distributed in such manner as the Court may direct. [160]

IT IS CONSIDERED, ADJUDGED AND DECREED: That the receiver of the Washington Northern Railroad Company do pay to the purchaser at the said sale such funds as may be in his possession on the day of sale over and above what shall be necessary to pay the obligations of the said receiver, and that the purchaser at the said sale take the said property charged with the burden of paying any unpaid obligations of the said receiver, but that the purchaser take the said property free from all other liens and incumbrances, and free from all claims and demands of all the parties to this suit, and that he take such title thereto as was had by the Washington Northern Railroad Company on the 4th day of June, 1910, together with all title by it since acquired.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the purchaser be let into the possession of the said premises, and that on the expiration of the period allowed for redemption under the statutes of Washington that a deed be executed in favor of the purchaser, and of his successor in interest, if any, unless the property shall, within the period allowed therefor by law, be re-

deemed from the lien effect of the said sale in the manner prescribed by the statutes of the State of Washington.

IT IS FURTHER ADJUDGED AND DECREED: That the said Master in Chancery do proceed to sell the properties of the Oregon-Washington Timber Company as an entirety, and the properties of the Washington Northern Railroad Company as an entirety.

IT IS FURTHER ADJUDGED AND DECREED: That the first parcel to be sold at said sale shall be the property acquired by H. E. Collins as receiver of the Washington Northern Railroad Company, and hereinbefore specifically described, and that the proceeds of the sale of the said property be applied to the payment of the receiver's certificates issued by the said H. E. Collins, as receiver of the Washington Northern Railroad Company.

IT IS FURTHER ADJUDGED AND DECREED: That in default of the payment hereinbefore specified to be made to the defendant, William W. Crawford, trustee, within thirty days from the date of this decree that the said Master in Chancery do proceed to sell the logging equipment purchased from the Wiest Logging Company, and hereinbefore described, and the properties of the Blazier Timber Company hereinbefore described, and that the proceeds of the said sale be applied:

1. To the expenses of the said sale.
2. To the payment of the sum of \$2,500 to E. S. McCord, senior solicitor for the defendant, William W. Crawford, as his attorney's fee.

3. To the payment of the sum of \$453,591.67 and interest from the 20th day of February, 1915, at 6% per annum, preference being given to accrued interest on the said debt.

IT IS CONSIDERED, ADJUDGED AND DECREED: That the purchaser of the said logging equipment and of the said properties of the said Blazier Timber Company take such title thereto as was had by Blazier Timber Company on the 1st day of March, 1912, with all title by it since acquired and all title held by the several parties to this suit. [161]

IT IS CONSIDERED, ADJUDGED AND DECREED: That the Master in Chancery aforesaid be and he is hereby authorized and empowered to advertise all of the said properties at the same time to be sold at the same time and at a time to be fixed by him.

It being adjudicated by this decree that the first mortgage given by the Oregon-Washington Timber Company under date of June 4, 1910, to Mississippi Valley Trust Company, and now held by Mississippi Valley Trust Company and Union Trust Company, secures the same debt as that evidenced by the mortgage and bonds of the Washington Northern Railroad Company, of date June 4, 1910.

IT IS CONSIDERED, ADJUDGED AND DECREED: That all payments made on one of the said debts, whether made voluntarily by the debtor, or whether realized by property given as security for the debt, shall be credited likewise on the debt of the other of the said mortgagors; and it is adjudged and decreed that the said debt of \$570,000 with interest thereon at the rate of 6% per annum from May 1,

1912, with the attorney's fee of \$33,250 and the trustee's fee of \$1,500 is to be paid but once, and that in so far as the same is paid out of the properties of the Oregon-Washington Timber Company it shall be satisfied, and shall not be again paid out of the properties of the Washington Northern Railroad Company.

IT IS CONSIDERED, ADJUDGED AND DECREED: That from and after the sale provided for in this decree each and every of the parties to this suit, and all persons claiming under them, be barred and foreclosed of all right, equity and title in the several properties hereinbefore described, excepting only the statutory right of redemption provided for by the laws of the State of Washington.

IT IS CONSIDERED, ADJUDGED AND DECREED: That complainants do have and recover their costs and disbursements of the defendant, William W. Crawford, trustee, and that the defendant William W. Crawford, trustee, recover his costs and disbursements from the defendants, Oregon-Washington Timber Company, Washington Northern Railroad Company, and Blazier Timber Company.

It appearing from the testimony in the cause that the complainant, Mississippi Valley Trust Company, has in its possession \$4,500 paid to it by Oregon-Washington Timber Company, under the sinking fund provisions of the mortgage of the said defendant:

IT IS CONSIDERED, ADJUDGED AND DECREED: That \$1,500 of this sum be retained by the said complainant for the use of the said complainant

and its cocomplainant, Union Trust Company and that the remainder of the said moneys be paid by the Mississippi Valley Trust Company on or before the day of sale to the receiver of the Oregon-Washington Timber Company, H. E. Collins, to be applied by him in payment pro tanto of the indebtedness of the receivership.

IT IS FURTHER CONSIDERED, ADJUDGED AND DECREED: That any and all of the parties to this suit may bid at the said sale, and that in payment of any bid interposed the bidder may tender to the Master in Chancery in payment thereof any receiver's certificates heretofore issued and outstanding and unpaid, which shall be received as cash at the face thereof with all accrued interest, and such bidder may likewise pay his bid by delivery to the Master in Chancery of outstanding bonds and coupons attached thereto; [162] Provided, however, that the bonds and coupons so tendered shall be received as a payment of the bid only in so far as the bonds and coupons so tendered shall be entitled to participate in the purchase price under the terms of the distribution of the proceeds hereinbefore provided for.

Any proposed bidder at the sale now decreed shall qualify to entitle him to become such bidder by depositing with the officer making the sale the sum of \$5,000 in money, and by depositing further the sum, in money or receivership certificates, outstanding and issued by the receiver, and, or, bonds and coupons issued and negotiated under the first mortgage hereinbefore found of the Washington Northern Railroad

Company to the Mississippi Valley Trust Company of June 4, 1910, and, or, bonds and coupons issued and negotiated under the first mortgage hereinbefore found of Oregon-Washington Timber Company to the Mississippi Valley Trust Company of June 4, 1910, of the face value of said certificates, and, or said bonds, of \$20,000. Such deposit to be made upon condition that if the sale be confirmed the bidder will make good his said purchase by paying the balance of the purchase price, either in money, and, or receivership certificates, and, or bonds or coupons for such sums as would be credited on said bonds and coupons had the entire bid been made in money, and if upon confirmation the bid of the purchaser be completed, the deposit shall be received and accepted as a part of the bid and purchase of the properties; and if on confirmation the bid be not completed, said deposit shall be forfeited and returned into court by the officer making the sale, less the charges and expenses of the sale, for credit to the cause, and the Court will further order and direct another and further sale of the properties.

Upon the coming in of the return of sale hereunder by the Master herein appointed to make the sale, and the sale being confirmed and the proceeds distributed in accordance with this decree, there shall be docketed a deficiency judgment or decree against the Washington Northern Railroad Company and in favor of the Mississippi Valley Trust Company, trustee, for the amount of such deficiency, if any, against said Washington Northern Railroad Company, the Mississippi Valley Trust Company to hold

said judgment and apply all proceeds which may be realized thereon upon any and all unpaid bonds and coupons ratably and proportionately, issued and negotiated by the Oregon-Washington Timber Company under its first mortgage of June 4, 1910, and a deficiency judgment or decree shall be docketed against the Oregon-Washington Timber Company and in favor of the Mississippi Valley Trust Company, trustee, and Union Trust Company, trustee, for all the sums of money unpaid after applying the proceeds of sale, the said deficiency judgment or decree to be held by the said Mississippi Valley Trust Company and Union Trust Company, trustees, in trust for all bondholders, holding unpaid bonds and coupons issued under the first mortgage of June 4, 1910, by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company, trustee, and all proceeds which may be realized upon said deficiency judgment or decree shall be applied by the said trustees ratably and proportionately upon the said bonds and coupons. Provided, that the full sum of \$570,000 and interest, together with costs and expenses herein declared, being realized and paid, either out of the proceeds of sale or upon the deficiency judgments now ordered, any surplus funds which may be realized shall be paid over by said trustees to William W. Crawford, trustee, who shall hold and apply the same ratably and proportionately upon the gold notes and interest coupons thereof issued and negotiated under the said mortgage to the said Crawford, trustee, and if there be surplus funds arising after so applying the same, such surplus funds

shall [163] be paid into the registry of the court for further order as to distribution thereof.

Let a deficiency judgment and decree be docketed in favor of the said William W. Crawford, trustee, and against Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company for such deficiency as may be ascertained and determined, the said mortgage indebtedness of said Crawford, trustee, not being paid in full out of the proceeds of sale, and the said mortgage indebtedness being so paid and a surplus fund arising, the surplus fund shall be paid into the registry of the Court for further order and distribution thereof.

In the event of disqualification or inability to act of the Master in Chancery hereinbefore designated, the Court upon application therefor will make another appointment of Master Commissioner, and the power to so appoint in such case is hereby reserved.

Any personal property in the hands of the receiver of the Oregon-Washington Timber Company shall be delivered over by the receiver to the purchaser of the properties of the said company, and any personal property belonging to the Washington Northern Railroad Company shall be delivered over by the receiver to the purchaser of the properties of the Washington Northern Railroad Company.

The purchaser at any sale hereunder being entitled to a bill of sale, deed, or deeds for the properties purchased at the sale, the receiver of the court shall execute and deliver likewise a bill of sale, deed, or deeds to the purchaser of the property so purchased, and

the complainants herein, Mississippi Valley Trust Company, trustee, and Union Trust Company, trustee, and the defendants herein, Washington Northern Railroad Company and Oregon-Washington Timber Company, shall unite in any and all bills of sale, deed or deeds to which such purchaser is entitled, and in the event of the failure of either of the said parties to unite in such deeds or bill of sale, or separately to execute such deeds or bill of sale, this decree shall stand as and for the bill of sale, deed or deeds required by the decree to be executed by the said parties.

Either party to this cause may apply at the foot of the decree for such further order in the premises as may not have been adjudicated by this decree. Let this cause be adjourned over accordingly, and let a certified copy of this decree issue as and for process of enforcement thereof.

EDWARD E. CUSHMAN,
Judge.

Deft. and Intervenor W. W. Crawford excepts to the foregoing Decree and each and every part thereof, and his exceptions are allowed.

EDWARD E. CUSHMAN,
Judge.

(Filed Mar. 4, 1915.) [164]

Petition for Appeal [and Order of Allowance].
To the Honorable EDWARD E. CUSHMAN, District Judge:

The above-named William W. Crawford, trustee, feeling aggrieved by the decree rendered and entered

in the above-entitled cause on the 4th day of March, 1915, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the assignment of errors filed herewith, and prays that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such Court in such cases made and provided. And your petitioner further prays that the proper order relating to the required security to be required of him be made.

KERR & McCORD,

Solicitors for William W. Crawford, Trustee, Defendant and Cross-complainant.

The foregoing claim of appeal is allowed.

Dated this 13th day of August, A. D. 1915.

EDWARD E. CUSHMAN,

United States District Judge presiding in the above-named court.

(Acceptance of service.)

(Filed Aug. 13, 1915.) [165]

Order Allowing Appeal.

Upon motion of E. S. McCord, Esq., solicitor and counsel for William W. Crawford, defendant and cross-complainant, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree heretofore filed and entered herein be, and the same is hereby, allowed, and that a certified transcript of the record, testi-

mony, exhibits, stipulations, and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond on appeal be fixed at the sum of \$1,000.00.

Dated this 13th day of August, A. D. 1915.

EDWARD E. CUSHMAN,

Judge of the United States District Court for the Western District of Washington, Southern Division.

(Acceptance of service.)

(Filed Aug. 13, 1915.) [166]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, William W. Crawford, trustee, as principal, and American Surety Company, a corporation, as surety, are held and firmly bound unto the complainants in the sum of One Thousand Dollars (\$1,000.00) lawful money of the United States, to be paid to them and their respective executors, administrators, successors and assigns; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this the 13th day of August, A. D. 1915.

WHEREAS, the above-named William W. Crawford, trustee, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and decree of the Dis-

trict Court of the United States for the Western District of Washington, Southern Division in the above-entitled cause.

NOW THEREFORE, the condition of this obligation is such that if the above-named William W. Crawford shall prosecute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

WILLIAM W. CRAWFORD,
Trustee.

[Seal of Surety Co.]

By KERR & McCORD,
His Solicitors.

AMERICAN SURETY COMPANY OF
NEW YORK.

By FRANK ALLYN, Jr.,
Resident Vice-pres. and Agent and
C. E. DUNKEEBERGER,
Res. Asst. Secy.

Approved this 13th day of Aug., 1915.

EDWARD E. CUSHMAN,
Judge.

(Acceptance of service.)

(Filed Aug. 13, 1915.) [167]

[Title of Court and Cause.]

Assignments of Error.

Comes now William W. Crawford, trustee, defendant and cross-complainant in the above-entitled case, and files the following assignments of error upon which he will rely upon his prosecution of his appeal

in the above-entitled cause [168] from the decree made by this Honorable Court on the 4th day of March, A. D. 1915.

I.

That the United States District Court for the Western District of Washington, Southern Division, erred in denying the motion interposed by the defendant and appellant, William W. Crawford, Trustee, to strike certain paragraphs and allegations contained in the original complaint filed in the case.

II.

That the said Court erred in denying the motion interposed by the defendant and appellant, William W. Crawford, Trustee, to strike certain paragraphs and allegations contained in the amended complaint filed in said case.

III.

That said Court erred in granting the motion of the complainants to strike certain paragraphs and allegations from the answer of the defendant, William W. Crawford, Trustee, and to strike certain paragraphs and allegations from the cross-complaint of the cross-complainant, William W. Crawford, Trustee.

IV.

That said Court erred in making and entering the following finding and holding contained in the decree:

“Heretofore, and on June 4th, 1910, the defendant railroad company executed and delivered to complainant Mississippi Valley Trust

Company, as trustee, its certain deed of mortgage conveying and transferring to the trustee thereunder certain properties hereinafter described; and the same having been so executed as to entitle it to record the same was on June 10, 1910, duly recorded in the office of the auditor of Skamania County, Washington, wherein the properties therein described were situated, in book "I" of Mortgages, pages 339 to 356, both inclusive; said mortgage was executed to secure 1000 bonds, numbered from 1 to 1000, both inclusive, and of the denomination of \$1000 each, dated as of June 4th, 1910, and maturing on May 1st, 1928, 600 of the bonds, numbered from 1 to 600, both inclusive, being by the railroad company duly negotiated and deposited with the Mississippi Valley Trust Company, as trustee, by way of collateral to a mortgage bond issue of the Oregon-Washington Timber Company of June 4th, 1910, hereinafter found [169] and determined, and 400 of the said bonds, numbered 601 to 1000, inclusive, were duly negotiated to the Oregon-Washington Timber Company and by it duly assigned to the railroad company as collateral under a second mortgage bond issued by the timber company as hereinafter found and determined. That the debt evidenced by the second mortgage bonds of the timber company has not been paid. That the interest of the railroad company in the said 400 railroad bonds immediately on its acquiring of the same became subject to the lien

of the 600 railroad bonds then outstanding, and the said 400 railroad bonds could be, and were in fact, reissued by the railroad company only as inferior in dignity and subsequent in time of payment to the 600 bonds first negotiated and then outstanding.”

V.

The said Court erred in making and entering the following finding and holding contained in said decree:

“Thereafter and on June 4th, 1910, likewise said the Oregon-Washington Timber Company executed a second mortgage to the Mississippi Valley Trust Company, as trustee, of all and singular the property described in its first mortgage of June 4th, 1910, and of all and singular its ownership, right and title to \$400,000 par value of the 6% first mortgage gold bonds of the Washington Northern Railroad Company, dated June 4th, 1910, and which by the terms of said mortgage matured May 1st, 1928. Said second mortgage likewise provided, and the second mortgage bonds issued thereunder so provided, that the mortgage debt should draw interest at 6% per annum, payable semi-annually, and by the terms of the mortgage security and of the bonds issued thereunder the bonds so issued were numbered from 1 to 400, both inclusive and matured serially, first maturity thereof beginning on May 1st, 1922, and terminating May 1st, 1928, and second mortgage bonds secured by said mortgage were negotiated by

the timber company and delivered to the Washington Northern Railroad Company, and for the said second mortgage bonds of the timber company, aggregating \$400,000 and for consideration running from the said timber company to the railroad company said first mortgage bonds of the railroad company of June 4th, 1910, were issued, negotiated and delivered to the said timber company.”

VI.

The said Court erred in making and entering the following finding and holding contained in the decree:

“In the contract for the purchase and sale of said second mortgage bonds it was provided:

As a further consideration for the sale to us of said \$1,000,000 par value of your bonds and without any new or further consideration, we agree to sell and deliver to you \$400,000 par value 6% gold bonds issued by us, dated the 1st day of May, 1910, due serially \$30,000 par value every six months, beginning May 1st, 1922, and ending May 1st, 1928, secured by a second mortgage on our lands and timber in Skamania County, Washington, and secured also by \$400,000 par value of the \$1,000,000 par value of bonds now proposed to be purchased by us from you; said \$400,000 par value of our bonds so sold to you, however, or the [170] proceeds of the sale thereof, to be used by you only for future extensions, betterments or equipment to your railroad after the expenditure of the said sum of \$450,000 above mentioned.”

VII.

The said Court erred in making and entering the following finding and holding contained in the decree:

“That the second mortgage bonds of the Oregon-Washington Timber Company and the 400 railroad bonds collateral thereto were not used for future extensions, betterments or equipment for the railroad, but the interest of the Washington Northern Railroad Company therein was assigned and transferred, as hereinafter set forth, to the defendant William W. Crawford, trustee, subject, however, to the paramount lien and interest of the holders of the 600 railroad bonds aforesaid.”

VIII.

The said Court erred in finding and decreeing that the true intent and agreement between the complainants and the mortgagors in the mortgages executed severally by the Washington Northern Railroad Company to the Mississippi Valley Trust Company and by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company “was to and did convey all of the property, real, personal and mixed, of every kind and wheresoever situate, and all appendages and appurtenances thereto, and all of the equities of redemption, reversions, interests, liens, franchises, rights, privileges, immunities, claims and demands, as well in equity as in law, then owned, possessed or enjoyed, and which might hereafter be in any wise acquired, owned, possessed or enjoyed by the Washington Northern Railroad

Company or the Oregon-Washington Timber Company, notwithstanding that the same was not particularly set forth in said indentures and not particularly described therein.”

IX.

The said Court erred in finding and decreeing that the so-called “after acquired property clause” contained in the mortgage executed by the Washington Northern Railroad Company to the Mississippi Valley Trust Company covered and included the [171] 400 railroad bonds numbered from 601 to 1000, inclusive, issued by the Washington Northern Railroad Company.

X.

The said Court erred in making and entering the following finding and holding contained in the decree:

“On March 1, 1912, the Washington Northern Railroad Company, the Oregon-Washington timber Company, and the Blazier Timber Company, all of which said companies being then owned, dominated and controlled by the same set of people, and practically and in effect one company, pursuant to the unanimous resolution of the stockholders and board of directors of the said companies, executed and delivered to the defendant William W. Crawford, trustee, their mortgage deed of trust, whereby they transferred and conveyed to the said trustee the property of the railroad hereinbefore described and which prior thereto had been mortgaged to the Mississippi Valley Trust

Company as trustee, as hereinbefore found, under the mortgage of date June 4th, 1910, and the property of the timber company which had theretofore been mortgaged under its first mortgage of June 4th, 1910, to the Mississippi Valley Trust Company as trustee, and which is hereinbefore described and which has been mortgaged likewise by said timber company by its second mortgage of June 4, 1910, hereinbefore found, and the said railroad company, one of the mortgagors to said mortgage, undertook to and did assign to said Crawford, trustee, as part security under said mortgage, \$400,000 of the second mortgage bonds of the timber company, issued under its said second mortgage, and \$1,000,000 first mortgage bonds of the railroad company *as they should thereafter from time to time be released and delivered, or releasable and deliverable, by the Mississippi Valley Trust Company under the terms and provisions of the first and second mortgage deeds of trust, respectively, of the timber company to said Mississippi Valley Trust Company.*”

XI.

The said Court erred in making and entering the following finding and holding contained in the decree:

“That the effect of the assignment of the railroad bonds so made” (to William W. Crawford) “was to assign the same subject to the prior lien and claim of the holders of the 600 railroad bonds first issued, and to postpone the rights

of William W. Crawford, trustee, in the railroad security until after the said 600 railroad bonds had been fully paid and discharged.”

XII.

The said Court erred in finding and decreeing that the mortgage executed by the Oregon-Washington Timber Company, the Washington Northern Railroad Company and the Blazier Timber Company to William W. Crawford, trustee, was subordinate and inferior [172] to the mortgages of June 4th, 1910, executed by the Washington Northern Railroad Company and by the Oregon-Washington Timber Company.

XIII.

The said Court erred in finding and decreeing that the assignment by the Washington Northern Railroad Company to William W. Crawford, trustee, of the \$400,000 of first mortgage bonds of the Washington Northern Railroad Company, numbered from 601 to 1000, inclusive, was received and accepted by the said William W. Crawford, trustee, subject and inferior to the lien of the \$600,000 of first mortgage bonds of the Washington Northern Railroad Company numbered from 1 to 600, both inclusive.

XIV.

The said Court erred in refusing to hold that the \$400,000 of first mortgage bonds of the railroad company so assigned to the said William W. Crawford, trustee, under his mortgage of March 1st, 1912, were of equal standing and rank with the \$600,000 of first mortgage bonds of said railroad company numbered from 1 to 600, both inclusive.

XV.

The said Court erred in finding and decreeing that the first mortgage executed by the Washington Northern Railroad Company to the Mississippi Valley Trust Company of June 4th, 1910, and the first mortgage of the Oregon-Washington Timber Company to the Mississippi Valley Trust Company of June 4th, 1910, were all executed and designed as security for one debt, to wit, the indebtedness of the Oregon-Washington Timber Company under its first mortgage of June 4th, 1910, in the sum of \$600,000 represented by the 600 first mortgage bonds of the Oregon-Washington Timber Company and in holding that the bonds secured by the mortgage of March 1st, 1912, executed to William W. Crawford, trustee, by [173] the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company were and are junior and inferior to the \$600,000 of first mortgage bonds of the Oregon-Washington Timber Company and the \$600,000 first mortgage bonds of the Washington Northern Railroad Company numbered from 1 to 600, both inclusive.

XVI.

The said Court erred in decreeing that the sum of \$33,250 was a reasonable sum to be allowed complainants for the services of their attorneys in this action.

XVII.

The said Court erred in decreeing that \$1,500 was a reasonable sum to be allowed to the complainants for their services as trustees.

XVIII.

The said Court erred in holding and decreeing that the mortgage of June 4, 1910, executed to the Mississippi Valley Trust Company by the Washington Northern Railroad Company and the mortgage executed by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company of June 4, 1910, should be foreclosed in the same action and cause.

XIX.

The Court erred in adjudging and decreeing that the proceeds of the sale of the property of the Oregon-Washington Timber Company should be applied in the following order:

1. To the payment of the costs of the said sale.
2. To the payment of the certificates of the Receiver of the Oregon-Washington Timber Company.
3. To the payment to Wallace McCamant, solicitor for complainants of the sum of \$33,250, the attorney's fee adjudged to be due him for services rendered by him in this cause.
4. To the payment of the interest coupons maturing November 1, 1912, on the bonds of the Oregon-Washington Timber Company, of date June 4, 1910. [174]
5. To the payment of the mortgage debt aforesaid, to wit, the sum of \$570,000 with interest thereon at the rate of 6% per annum from May 1, 1912, less the face of the coupons maturing November 1, 1912.
6. To the payment to E. S. McCord, solicitor for the

defendant, William W. Crawford, trustee, of the sum of \$2,500, the attorney's fee allowed him for the foreclosure of the Crawford mortgage.

7. To the payment to William W. Crawford, trustee, of the sum of \$453,591.67, with interest from the 20th day of February, 1915.
8. The overplus, if any, to be paid into court to be distributed in such manner as the Court may direct.

XX.

The Court erred in adjudging and decreeing that the proceeds of the sale of the properties of the Washington Northern Railroad Company should be applied as follows:

1. To the payment of the costs of said sale.
2. To the payment of the certificates of the receiver of the Washington Northern Railroad Company.
3. To the payment to Wallace McCamant, solicitor for complainants, of the sum of \$33,250, the attorney's fee adjudged to be due him for services rendered by him in this cause.
4. To the payment of the coupons maturing November 1, 1912, on the bonds of the Washington Northern Railroad Company, of date June 4, 1910, numbered 1 to 600, less the 30 bonds which have been paid up and surrendered to said railroad company.
5. To the payment of the mortgage debt aforesaid, to wit, the sum of \$570,000 with interest thereon at the rate of 6% per annum from

May 1, 1912, less the face of the coupons maturing November 1, 1912, on bonds 1 to 600, less the 30 bonds which have been paid and retired.

6. To the payment to E. S. McCord, solicitor for the defendant, William W. Crawford, trustee, of the sum of \$2,500, the attorney's fee allowed him for the foreclosure of the Crawford mortgage.
7. To the payment to William W. Crawford, trustee, of the sum of \$453,591.67, with interest from the 20th day of February, 1915.
8. The overplus, if any, to be paid into court, to be distributed in such manner as the Court may direct.

XXI.

The Court erred in refusing to hold that the proceeds of the sale of the properties of the Oregon-Washington *Timber* [175] *should be applied pro rata* to the payment of the first mortgage bonds of the Oregon-Washington Timber Company numbered from 1 to 570, both inclusive, and that the equivalent to said sum to be applied *pro rata* to the payment of the first mortgage bonds of the Washington Northern Railroad Company, numbered from 1 to 570, both inclusive, and in refusing to hold that the proceeds of the sale of the properties of the Washington Northern Railroad Company, after the payment of the costs and receiver's expenses, should be applied upon the \$400,000 of first mortgage bonds of the Washington Northern Railroad Company, represented by the said William W. Crawford, trus-

tee, to the extent and in an amount so that each of the bonds numbered from 601 to 1000, both inclusive, should receive a payment thereon equal to the payment on each of the bonds numbered from 1 to 570, both inclusive, and in refusing to hold that the first mortgage bonds of the Washington Northern Railroad Company numbered from 601 to 1000, both inclusive, are of equal rank with the bonds numbered from 1 to 570, both inclusive, of said Washington Northern Railroad Company; and in refusing to direct the application of the remaining proceeds of the sale of the properties of the Washington Northern Railroad Company *pro rata* upon all of the outstanding first mortgage bonds of the Washington Northern Railroad Company, numbered from 1 to 570, both inclusive, and from 601 to 1000, both inclusive; and in holding that the attorney's fee of \$33,250 should be paid from the proceeds of the sale of the properties of the Washington Northern Railroad Company prior to the application of the proceeds of the sale of the properties of the Washington Northern Railroad Company upon the indebtedness, principal and interest, represented by said first mortgage bonds of the railroad company. [176]

XXII.

The said Court erred in holding and decreeing that the complainants were entitled to an attorney's fee of \$33,250, payable twice, once out of the proceeds of the sale of the properties of the Oregon-Washington Timber Company and second payable out of the proceeds of the sale of the Washington Northern Railroad Company.

XXIII.

The Court erred in holding and decreeing that \$33,250 was a reasonable attorney's fee to be allowed to the complainants for the foreclosure of the mortgage of the Oregon-Washington Timber Company, and in holding that the same sum was a reasonable sum for the foreclosure of the mortgage of the Washington Northern Railroad Company.

XXIV.

The Court erred in refusing to hold and decree that William W. Crawford, trustee, held a first and paramount lien upon the \$400,000 of first mortgage bonds of the railroad company numbered from 601 to 1000, both inclusive, and in refusing to hold and decree that the said William W. Crawford held a first and paramount lien upon the \$400,000 of second mortgage bonds of the Oregon-Washington Timber Company, numbered from 1 to 400, both inclusive, and in refusing to direct and decree a sale of said last-mentioned bonds.

XXV.

The said Court erred in holding that the property acquired by H. E. Collins, as receiver of the Washington Northern Railroad Company and described in the decree should be first sold and that the proceeds of the sale of said property should be applied to the payment of the receiver's certificates. [177]

XXVI.

The Court erred in adjudicating by its decree that the first mortgage given by the Oregon-Washington Timber Company under date of June 4, 1910, to the Mississippi Valley Trust Company secured the same debt as that evidenced by the mortgage and bonds of

the Washington Northern Railroad Company of date June 4, 1910.

XXVII.

The said Court erred in holding that the complainants were entitled to recover their costs and disbursements of the defendant William W. Crawford, trustee.

XXVIII.

The said Court erred in decreeing that \$1,500 of the \$4,500 paid to the Mississippi Valley Trust Company by the Oregon-Washington Timber Company, under the sinking fund provisions of the mortgage should be retained by the complainants for their use, and in holding that the remainder of said money be paid by the Mississippi Valley Trust Company to H. E. Collins to be applied by him *pro rata* on the indebtedness of the receivership.

XXIX.

The said Court erred in holding that under the provisions relating to after acquired property contained in the mortgage executed under date of June 4, 1910, by the Washington Northern Railroad Company to the Mississippi Valley Trust Company the Washington Northern Railroad Company acquired the \$400,000 of first mortgage bonds of the railroad company numbered from 601 to 100, both inclusive, and that such bonds became subject and subordinate to the lien of the first mortgage bonds numbered from 1 to 600, both inclusive, described in said mortgage dated June 4, 1910. [178]

XXX.

The said Court erred in holding that it was the

intention of all of the parties at the time of the execution of the Crawford mortgage to make the security given for said mortgage subject to the \$600,000 mortgage bonds sold and delivered by the Mississippi Valley Trust Company.

XXXI.

The said Court erred in holding and decreeing that certain timber lands acquired after the execution of the mortgage of June 4th, 1910, by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company became subject to the lien of said mortgage.

KERR & McCORD,

Solicitors for Defendant and Cross-Complainant
William W. Crawford.

(Acceptance of service.)

(Filed Aug. 13, 1915.) [179]

Stipulation (to Send Up Original Exhibits).

IT IS HEREBY STIPULATED between the parties hereto that the clerk of this court in making up his return to the citation on appeal herein shall include therein as a part of the record the originals instead of copies of the following exhibits:

Complainants' Exhibit No. 8, being a copy of the mortgage given by the Washington Northern Railroad Company to the Mississippi Valley Trust Company, dated June 4th, 1910.

Complainants' Exhibit No. 9, being a copy of the first mortgage given by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company, dated June 4th, 1910.

Complainants' Exhibit No. 10, being a copy of the second mortgage given by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company, dated June 4th, 1910.

Complainants' Exhibit No. 11, being a copy of the mortgage given by the Washington Northern Railroad Company, Oregon-Washington Timber Company and Blazier Timber Company to William W. Crawford, Trustee, dated March 1st, 1912.

Complainants' Exhibit No. 13, being the proposal of the Oregon-Washington Timber Company to the Washington Northern Railroad Company, of date June 4th, 1910, on the subject of the purchase of the bonds of the Washington Northern Railroad Company by the Oregon-Washington Timber Company, and the consideration for such bonds.

Complainants' Exhibit No. 15, being a statement of payments of principal and interest called for by complainants' mortgages prior to the bringing of the suit.

Complainants' Exhibit No. 16, being certain accounts shown by the books of the Washington Northern Railroad Company and the [180] Oregon-Washington Timber Company.

Complainants' Exhibit No. 17, showing entry on books of the Washington Northern Railroad Company of credit to first mortgage six per cent bond account, \$1,000,000 bonds.

Complainants' Exhibits Nos. 18 and 19, being pages of the account book of the Washington Northern Railroad Company.

Complainants' Exhibit No. 29: File of letters from

Zane and Busby & Weber to J. E. Blazier.

Complainants' Exhibit No. 30: Letter and account.

Complainants' Exhibit No. 31: Contract between the Washington Northern Railroad Company and the Weist Logging Company.

Complainants' Exhibit No. 32: Statement of payments upon the Wiest Logging Company contract.

Complainants' Exhibit No. 33: Copy of the resolution authorizing the execution of the mortgage of June 4th, 1910, by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company.

Complainants' Exhibit No. 34: Pages 59, 60 and 61 of Volume 3 of the Oregon-Washington Logging Company, afterwards the Oregon-Washington Timber Company.

Complainants' Exhibit No. 36, being certain pages of record book No. 4 of the Oregon-Washington Logging Company, afterwards the Oregon-Washington Timber Company.

Complainants' Exhibit No. 37, being extracts from the minute book of the Washington Northern Railroad Company.

Defendants' Exhibit "A": Extract from minute book of the Oregon-Washington Timber Company, being portion of the record showing the corporate action of the Washington Northern Railroad Company authorizing the execution of the mortgage of [181] March 1st, 1912, by the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company to William W. Crawford, trustee, containing copy

of said mortgage, being the same instrument as Complainants' Exhibit No. 11.

Defendants' Exhibit "B": Certain extracts from the corporate records, Volume 1, of the Washington Northern Railroad Company.

Defendants' Exhibit "C": Extract from the minute-book of the Washington Northern Railroad Company.

Defendants' Exhibit "D": Extract from the minute-book of the Washington Northern Railroad Company relating to the contract with the Weist Logging Company.

Defendants' Exhibit "G": Corporate records of the Blazier Timber Company, showing authorization for execution of the mortgage to William W. Crawford by the Blazier Timber Company.

Defendants' Exhibit "H": Corporate record of the Oregon-Washington Timber Company, showing authorization for execution of the mortgage to William W. Crawford by the Oregon-Washington Timber Company.

Defendants' Exhibit "A-1": Letter attached to depositions of Frederick Vierling and Samuel B. Blair, being letter dated June 6th, 1910, from James H. Grover to the trust department of the Mississippi Valley Trust Company.

Defendants' Exhibit "B-1": Letter dated June 4th, 1910, from the Oregon-Washington Timber Company to Messrs. Little & Hays.

Defendants' Exhibit "C-1": List of members of syndicate for purchase of bonds.

Defendants' Exhibit "D-1": Copy of mortgage of

Blazier [182] Timber Company, Oregon-Washington Timber Company and Washington Northern Timber Company and J. E. Blazier to Mississippi Valley Trust Company, trustee, filed for record April 4th, 1911, in Book "K" of Mortgages at page 139, records of Skamania County.

Defendants' Exhibit "E-1": Confirmatory mortgage.

Defendants' Exhibit "F-1": List of holders of first mortgage bonds deposited with Mississippi Valley Trust Company.

Defendants' Exhibit "G-1": Letter dated April 10th, 1912, from J. E. Blazier as President of the Washington Northern Railroad Company, Oregon-Washington Timber Company and Blazier Timber Company, and J. E. Blazier individually, to Mississippi Valley Trust Company.

SNOW & McCAMANT of
Solicitors for Complainants.

KERR & McCORD,

Solicitors for Defendant William W. Crawford.

(Filed Aug. 25, 1915.) [183]

Order for Sending Up Original Exhibits.

Agreeably to the written stipulation of the parties this day filed herein, and it being in the opinion of the presiding Judge undersigned deemed proper that the clerk of this court in making up his return to the citation on Appeal herein shall include therein as a part of the record the original instead of copies of certain exhibits, being the exhibits mentioned in said stipulation on file herein,

WHEREFORE, IT IS ORDERED that the said original exhibits which are particularly mentioned in said stipulation be sent up by the clerk of this court as a part of his return to the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, instead of copies thereof.

Dated at Tacoma, Wn., this the 9th day of November, 1915.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington.

(Filed Nov. 9, 1915.) [184].

[Title of Court and Cause.]

**[Certificate to Statement of Evidence and Order
Making Same a Part of the Record.]**

THIS IS TO CERTIFY: That the cross-complainant and appellant prepared a statement of evidence and duly lodged the same in the office of the clerk of this court; that the other parties to the action were duly notified of such lodgment, and the time and place given in such notice as to when the appellant would ask the Court to approve the statement, the time so named being more than ten days after such notice.

And this Court does further CERTIFY that after such notice was given and such statement of the evidence lodged with the clerk of this court, the Mississippi Valley Trust Company made certain objections and amendments and that by consent of both parties such amendments have been incorporated in the

statement of the evidence and that the statement of the evidence [185] is true, complete and properly prepared and that the parties have consented that the same is a true, complete, properly prepared and agreed statement of the evidence.

WHEREFORE, it is by the Court ORDERED, ADJUDGED AND DECREED that the annexed statement of the evidence attached hereto be and the same is hereby made a part of the record in this cause as the statement of the evidence in said cause and the same shall constitute a part of the record in said cause for the purpose of appeal.

DATED at Tacoma, Washington, this 2d day of November, 1915.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington. [186].

Transcript of Testimony.

[Testimony of Edward C. Wright, for Complainants.]

EDWARD C. WRIGHT, a witness produced on behalf of the complainants, being first duly sworn, testified as follows:

Direct Examination by Mr. McCAMANT.

In answer to interrogatories propounded by Mr. McCamant the witness testified that he was a member of the Bar of the States of Missouri, Kansas, Massachusetts and New York; that he had been in the practice of his profession for twenty-eight years; that his practice consisted practically of trust company and railroad business; that he was attorney for

(Testimony of Edward C. Wright.)

one of the complainants in the case at bar; that he was familiar with the property purchased by the Oregon-Washington Timber Company subsequent to June 4, 1910.

Over the objection of counsel for defendant and cross-complainant the witness testified that the Oregon-Washington Timber Company purchased and paid for the north half of the northeast quarter of section twenty-four, township three, range five east Willamette Meridian, and the south half of the north half of section nineteen, township two north, range six east, Willamette Meridian, and the north half and the north half of the south half of section thirty-one, township three north, range six east, Willamette Meridian, in Skamania County, Washington.

Witness further testified that there now remained in the hands of the Mississippi Valley Trust Company, trustee, in St. Louis, the sum of \$4,500, paid in on account of the sinking fund. That the bonds secured by the mortgages represented by attorneys for complainants were held as follows: About one-third in Michigan; one-third in Missouri, and the other third scattered through Nebraska and Kansas. [187]

Witness further testified that the expenses of the Mississippi Valley Trust Company and the Union Trust Company in connection with the handling of their trust had been about \$1,750, but that they were willing to accept the sum of \$1,500; that witness

(Testimony of C. W. Fulton.)

considered that amount a very reasonable compensation.

Over objection of counsel for defendant and cross-complainant the witness stated that the legal questions involved in this case were complicated and close and necessitated a great amount of work; that a large sum of money was involved; that the bonds were distributed over a large area and a great many trips had to be made; that witness was compelled to go from Kansas City to Chicago twice and from Kansas City to St. Louis three times and also from Kansas City to Portland and Tacoma. That the case had taken witness away from his office for an aggregate period of seventeen days; that witness was obliged to ask Mr. McCamant to come from Portland to Kansas City and to St. Louis and that Mr. McCamant had made two eastern trips in response to these requests.

Cross-examination waived.

Witness excused. [188]

[Testimony of C. W. Fulton, for Complainants.]

C. W. FULTON, called as a witness on behalf of complainants, being first duly sworn, testified as follows:

Direct Examination by WALLACE McCAMANT,
Esq.

In answer to interrogatories propounded by Mr. McCamant witness testified as follows: That he was an attorney at law and had been in the practice of that profession for over thirty-five years; that his practice had been confined to Washington and Ore-

(Testimony of C. W. Fulton.)

gon; that he was now engaged in a general practice in the city of Portland; that he was acquainted with what was generally considered a proper charge for legal services; that in the present case he thought that a fair and reasonable compensation for the services rendered would be five per cent on the debt and accrued interest.

Cross-examination by E. S. McCORD, Esq.

In answer to interrogatories propounded by Mr. McCord the witness testified that in naming five per cent upon the debt and accrued interest he had assumed that the security was at least equal to the amount of the indebtedness; that the adequacy or inadequacy of the security in the opinion of the witness would be immaterial in fixing an attorney's fee to be allowed in a decree, for as much as the mortgagor must be presumed to have tendered adequate security and the mortgagor and his successors in interest should not complain if the attorney's fee were based on the assumption that the security was adequate. That if the security proved inadequate such fact might call for a readjustment of the amount to be paid as between attorney and client, but could not in the judgment of the witness affect the amount reasonable to be allowed in a proceeding of this character. That in settling with their clients attorneys *attorneys* take into consideration the amount recovered. That in the foreclosure of a mortgage a point could be reached where five per cent would be too large an amount to charge, while in other cases it would be too [189] small; that in

(Testimony of C. W. Fulton.)

fixing a fee the amount involved and the question involved must be taken into consideration.

Redirect Examination by Mr. McCAMANT.

Over the objection of counsel for the defendant and cross-complainant the witness testified that he did not think there was any difference between the quantum of charges obtaining in the courts of Oregon and Washington; that he thought attorneys as a rule charged about the same in both states; that he had considerable business in the Federal Courts of Oregon.

Witness excused. [190]

[Testimony of **A. B. Winfree et al., for Complainants.**]

A. B. WINFREE was called as a witness on behalf of the complainants and having been duly sworn it was thereupon stipulated and agreed between counsel that A. B. Winfree, Robert Treat Platt and Samuel White would testify substantially to the same effect as the testimony given by C. W. Fulton; that they are residents of Oregon, and have had similar experience to that of Mr. Fulton.

Counsel for complainants then offered in evidence a copy of the mortgage given by the Washington Northern Railroad Company to the Mississippi Valley Trust Company on June 4th, 1910, and the same was received and filed in evidence and identified as "Complainants' Exhibit No. 8."

Counsel for complainants then offered in evidence a copy of the mortgage given by the Oregon-Washington Timber Company being the first mortgage

(Testimony of A. B. Winfree.)

given by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company under date of June 4th, 1910.

Counsel for defendants objected to the offer of the exhibit on the ground that it is irrelevant, incompetent and immaterial, and as being an attempt on the part of the complainants to foreclose two mortgages in the same suit and as being a misjoinder of causes of action and a misjoinder of parties complainant and parties defendant.

Objection overruled, and document referred to received and filed in evidence and identified as "Complainants' Exhibit No. 9."

Counsel for complainants then offered in evidence a [191] copy of the second mortgage given by the Oregon-Washington Timber Company to the Mississippi Valley Trust Company on June 4th, 1910; and it was stipulated that the same was subject to the objection made to exhibit 9, with the same understanding that no objection was made on account of the exhibit offered being a copy.

The document referred to was received and filed in evidence and identified as "Complainants' Exhibit No. 10."

Counsel for complainant then offered in evidence copy of mortgage given by the Washington Northern Railroad Company, the Oregon-Washington Timber Company, and the Blazier Timber Company to William W. Crawford, Trustee, on March 1, 1912, and the same was received and filed in evidence and identified as "Complainants' Exhibit No. 11."

(Testimony of A. B. Winfree.)

Counsel for complainants then offered in evidence accepted proposal from the Oregon-Washington Timber Company to the Washington Northern Railroad Company, of date June 4th, 1910, on the subject of the purchase of the bonds of the Washington Northern Railroad Company by the Oregon-Washington Timber Company and the consideration for such bonds.

Objected to by counsel for defendant and cross-complainant as incompetent, irrelevant and immaterial, but not objected to on ground that it was a copy instead of the original.

Objection overruled and document referred to received and filed in evidence and identified as "Complainants' Exhibit No. 13." [192]

[Testimony of H. E. Collins, for Complainants.]

H. E. COLLINS, called as a witness on behalf of the Complainants, being first duly sworn, testified as follows:

Direct Examination, by Mr. WALLACE McCAMANT.

That he was receiver of the Oregon-Washington Timber Company and of the Washington Northern Railroad Company, under appointment by the United States District Court for the Western District of Washington; that he was connected with these corporations prior to his appointment as receiver, first as representative of the first mortgage bondholders of the corporations, and later as secretary; that he was familiar with the properties

(Testimony of H. E. Collins.)

involved in the present litigation; that the railroad owned by the Washington Northern Railroad Company consisted approximately of twenty-five miles of track extending from Brindle on the Columbia River up into the timber of the Oregon-Washington Timber Company and the Blazier Timber Company; that the road is not now operating; that part of the lines have been taken up; that in his opinion the road could not be operated except as an entirety, it having been constructed for the purpose of transporting the timber of the Oregon-Washington Timber Company to the Columbia River, and was the only means of getting that timber to market,—that it did not connect with any other artery of commerce except the Columbia River.

Witness stated that he was familiar with the state of accounts between the Oregon-Washington Timber Company and the Washington Northern Railroad Company on the one hand, and the Mississippi Valley Trust Company and the Union Trust Company on the other with reference to the mortgages of June 4th, 1910; that [193]. he had prepared a statement showing payments of principal and interest called for by these mortgages prior to the bringing of this suit.

Statement offered in evidence. Objected to by counsel for defendants and cross-complainant as incompetent, irrelevant and immaterial and not the best evidence. Objection overruled. Statement received in evidence and marked "Complainants' Exhibit No. 15." The books from which said statement

(Testimony of H. E. Collins.)

was prepared were present before the examiner at the time the statement was offered in evidence.

Over objection of counsel for defendants and cross-complainant witness stated that he had heretofore examined the books of account of the Oregon-Washington Timber Company and the Washington Northern Railroad Company; that the books of the Washington Northern Railroad Company showed the payment of interest on bonds dated June 4th, 1910, up to the payment due November 1st, 1912, but did not show payment due November 1st, 1912, amounting to \$17,100, nor payment of like amount due May 1st, 1913. That all interest payments of the Oregon-Washington Timber Company were accounted for on the books of the Washington Northern Railroad Company.

That the books of the Oregon-Washington Timber Company under an account entitled "Mississippi Valley Trust Company Bond Account" showed a payment on January 30th, 1913, of \$30,000 of first mortgage bonds of the timber company, due May 1st, 1912; that said sum of \$30,000 was the entire amount shown by the books of the Oregon-Washington Timber Company or the Washington Northern Railroad Company as paid on account of principal.

Copy of above account offered and received in evidence, and identified as "Complainants' Exhibit No. 16."

Witness further stated that the books of the Washington Northern Railroad Company showed a credit to first mortgage six per cent bond account,

(Testimony of H. E. Collins.)

under date of July 1st, 1910, of \$1,000,000 bonds.
[194]

Copy of page of book referred to, identified by witness, offered and received in evidence and marked "Complainants' Exhibit No. 17."

By agreement of counsel for defendants and cross-complainant a copy of the pages of the record of the Washington Northern Railroad Company covering the matter of the payment of interest on the mortgages of June 4th, 1910, identified by the witness, was offered and received in evidence and marked "Complainants' Exhibits Nos. 18 and 19."

Witness thereupon stated that no payments had been made except as shown by the above-mentioned books, either on account of principal or interest of the mortgages of June 4th, 1915.

That he was in the office of the two companies on the 1st of November, 1912, and the 1st of May, 1913, and that the interest installments falling due on those dates were not paid because the companies were unable to make them; that no payments were made on account of the principal, nor into the sinking fund called for by either of the mortgages, except as shown by the books offered in evidence. That he was familiar with the financial condition of the Washington Northern Railroad Company and the Oregon-Washington Timber Company in the month of September, 1913; that in addition to the default on account of the principal and interest on the mortgages there were unsecured debts approximating \$75,000 in amount, principally the debts of

(Testimony of H. E. Collins.)

the Washington Northern Railroad Company; that the debts were practically all past due; that the creditors were pressing for their money and there were no funds with which to pay them; that there was approximately \$5,000 due for labor in addition to the \$75,000; that as receiver he had paid this \$5,000 from funds realized from a loan authorized by the Federal Court.

Over the objection of counsel for defendants and cross-complainant witness testified that the relations of the Washington [195] Northern Railroad Company and the Oregon-Washington Timber Company were very close; that the same persons were officers and directors of the two companies, and that at least three-fourths of the capital stock of the two companies was owned by the same individuals. That the traffic of the Washington Northern Railroad Company consisted exclusively of the timber of the Oregon-Washington Timber Company, the Blazier Timber Company and the timber on one or two small tracts which were later acquired by the railroad company.

Over the objection of counsel for defendants and cross-complainant, witness testified that the accounts of the two corporations were in confusion as to moneys paid out by one which should have been paid by the other, so much so that no account had ever been rendered as between the two corporations since January 1st, 1911. That the operation of the Oregon-Washington Timber Company would not have been possible without the operation in connection

(Testimony of H. E. Collins.)

with it of the Washington Northern Railroad Company; that the Washington Northern Railroad Company is the only means available of getting to market the timber of the timber company.

Witness stated that he was acquainted with J. E. Blazier; that said Blazier was in St. Louns in September, 1913; that the executive officer of the two mortgagor companies at that time was Engene Blazier, brother of J. E. Blazier. That he was in the office of the two companies at the time the mortgage given to William W. Crawford was placed upon the property described in the bill of complaint and the cross-bill and when the negotiations were had leading up to the making of the loan; that the Assets Realization Company of Chicago, floated the bond issue; that Messrs. Zane, Busby & Weber represented them in the investigations preliminary to the making of the loan; that their offices were in the First National Bank Building, Chicago, Illinois; that Harry P. Weber had the matter in [196] hand; that he was familiar with the signature of Mr. Weber; that the signature to the letter of March 26, 1912, purporting to have been written by Harry P. Weber to witness and letter of same date purporting to have been written by Zane, Busby & Weber by Harry P. Weber to J. E. Blazier, and a third letter of date March 26, 1912, purporting to have been written by Zane, Busby & Weber by Harry P. Weber to J. E. Blazier, with a postscript thereto signed H. P. W. was the signature of Harry P. Weber, and that the carbon copy of a letter dated March 31st, 1912, purporting to have been written by the witness

(Testimony of H. E. Collins.)

to Harry P. Weber was in fact written by witness; that witness wrote the letter of March 31st, 1912, addressed it to the correct address of Mr. Weber and mailed it. That he received the record books referred to in the letter of March 26, 1912, written by Zane, Busby & Weber to J. E. Blazier; that these record books included the original record books of the Washington Northern Railroad Company.

The file of correspondence identified by witness offered in evidence. Objected to by counsel for defendant and cross-complainant as incompetent, irrelevant and immaterial, and as not properly identified. Objection overruled. File of letters referred to received and filed as one exhibit, identified as "Complainants' Exhibit No. 29."

Over objection of counsel for defendants and cross-complainant, witness stated that the record books of the Washington Northern Railroad Company and the Oregon-Washington Timber Company were in the possession of Zane, Busby & Weber for about a month prior to March 26th, 1912.

Witness identified the signature of Edward Ridgely, vice-president of the Assets Realization Company upon a letter written by the Assets Realization Company of date April 17th, 1912; that said letter when received at the office of the Oregon-Washington Timber Company and the Washington Northern Railroad Company contained the enclosures now attached thereto; that the notes referred [197] to in the first item of the account dated April 17, 1912, were the notes entitled first and general lien

(Testimony of H. E. Collins.)

first mortgage six per cent gold notes, executed March 1st, 1912, by the Oregon-Washington Timber Company, the Blaizier Timber *Timber* Company and the Washington Northern Railroad Company amounting to \$425,000; that the account attached to the letter just identified by witness is the account reported by the Assets Realization Company to the trustees of the Crawford loan, and has been in the possession of the mortgagor corporation since that date.

Letter and account identified by witness offered in evidence. Objected to by counsel for defendants and cross-complainant, as incompetent, irrelevant and immaterial, and not the best evidence. Objection overruled. Documents received and filed in evidence, marked "Complainants' Exhibit No. 30."

Witness then testified that he had in his possession the contract entered into by the Washington Northern Railroad Company with the Weist Logging Company with reference to the purchase of logging material, and produced same and identified the signatures thereto, with exception of the witnesses, as genuine.

Contract offered in evidence and received and filed, and identified as "Complainants' Exhibit No. 31."

Witness stated that he was familiar with the payments that had been made on the contract with the Weist Logging Company by the Washington Northern Railroad Company; that he had prepared a statement of such payments, and identified the state-

(Testimony of H. E. Collins.)

ments handed him by counsel.

Statement offered in evidence. Objected to by counsel for defendants and cross-complainant as incompetent, irrelevant and immaterial. Objection overruled. Statement received and filed in evidence and identified as "Complainants' Exhibit No. 32."

Witness then stated that he personally knew these payments had been made and that they were made with the funds of the Washington Northern Railroad Company. [198]

Over objection of counsel for defendants and cross-complainant, witness testified that the rights of the Washington Northern Railroad Company in that contract with the Weist Logging Company had not to his knowledge been assigned to anyone; that the equipment covered by that contract was now in Skamania County, Washington, in the custody of the receiver of the Washington Northern Railroad Company; that some of it was on the property of the Washington Northern Railroad Company and some of it on the property of the Blazier Timber Company, and that two engines he believed to be in some other place.

Upon request of counsel witness produced the record books of the directors' and stockholders' meetings of the Oregon-Washington Timber Company.

Counsel for complainants offered in evidence so much of the books identified by witness as was sufficient to show the corporate action taken with a view of authorizing the execution of the mortgage of June 4th, 1910, by the Oregon-Washington Timber Com-

(Testimony of H. E. Collins.)

pany to the Mississippi Valley Trust Company, and the fact that the parties participating in the stockholders' meeting passing on that question were in fact the stockholders of the corporation and all of the stockholders, and the further fact that those who participated in the directors' meeting purporting to authorize the execution of that mortgage were in fact directors of the corporation.

Objected to by counsel for defendants and cross-complainant on the ground that the same is too indefinite and uncertain and gives no understanding as to what particular records are offered in evidence, necessitating the passing on the question by someone as to what records do bear upon the fact as indicated by counsel. Objection overruled, and documents referred to received in evidence and identified as "Complainant's Exhibit No. 33."

Counsel for complainants offered in evidence pages 59, 60 and 61 of Volume 3 of the Oregon-Washington Logging Company, afterward [199] the Oregon-Washington Timber Company, and asked leave to substitute a copy in lieu of the original, which was agreed to by counsel for defendant and cross-complainant.

Pages referred to received in evidence and identified as "Complainants' Exhibit No. 34."

Counsel for complainants offered in evidence certain pages of record book No. 4 of the Oregon-Washington Logging Company, afterwards the Oregon-Washington Timber Company.

Pages referred to received and filed in evidence

(Testimony of H. E. Collins.)

and identified as "Complainants' Exhibit No. 36."

Counsel for complainants offered in evidence extracts from the minute-book of the Washington Northern Railroad Company.

Received and filed in evidence and identified as "Complainants' Exhibit No. 37."

Cross-examination by E. S. McCORD, Esq., of Counsel for Defendant and cross-complaint, William W. Crawford.

Counsel for defendant and cross-complainant offered in evidence extract from minute-book of the Oregon-Washington Timber Company, being portion of the record showing the corporate action of the Washington Northern Railroad Company authorizing the execution of the mortgage of March 1st, 1912, by the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company to William W. Crawford, Trustee, and containing a copy of said mortgage.

Received and filed in evidence and identified as Defendant's Exhibit "A."

Counsel for defendant and cross-complainant offered in evidence certain extracts from the corporate records,—Volume 1 [200] of the Washington Northern Railroad Company.

Received in evidence and identified as Defendant's Exhibit "B."

Counsel for defendant and cross-complainant offered in evidence certain extracts from the record book of the Washington Northern Railroad Company.

(Testimony of H. E. Collins.)

Objected to by counsel for complainants as incompetent, irrelevant and immaterial and as having no bearing on the issues raised by the pleadings. Objection overruled and documents received in evidence and identified as Defendant's Exhibit "C."

Counsel for defendant and cross-complainant offered in evidence extract from the minute-book of the Washington Northern Railroad Company, relating to the contract with the Weist Logging Company.

Received in evidence and identified as Defendant's Exhibit "D."

Counsel for defendant and cross-complainant offered in evidence the corporate records of the Blazier Timber Company, showing authorization for execution of mortgage to William W. Crawford.

Received in evidence and identified as Defendant's Exhibit "G."

Counsel for defendant and cross-complainant offered in evidence corporate records of the Oregon-Washington Timber Company showing authorization for execution of mortgage to William W. Crawford.

Received in evidence and identified as Defendant's Exhibit "H."

The witness thereupon, in answer to interrogatories propounded by counsel for defendant and cross-complainant, testified as follows:

That he was not Secretary of the Blazier Timber Company at the time of the execution of the Crawford mortgage, and was [201] not now, and was

(Testimony of H. E. Collins.)

not familiar with the records of that company; that he was secretary of the company for about three months prior to September 4th, 1913; that he was familiar with the account books of the company; that one payment of \$30,000 had been made on account of the Crawford mortgage, which should have been credited to the Blazier Timber Company; that it was paid by draft sent by the Oregon-Washington Timber Company to the Assets Realization Company or to Mr. Crawford. That the \$30,000 was paid on account of principal and as witness recalled it there was \$12,700 paid on account of interest. That the floating indebtedness of the Blazier Timber Company at the time of the filing of the cross-bill was, outside of taxes, \$1,400 to the United States Steel & Wire Rope Company or the United States Wire & Steel Company. That he had not found any executed contract or bill of sale executed by the Washington Northern Railroad Company to the Oregon-Washington Timber Company covering the Weist Logging Company's contract with the railroad company; that he had found an unexecuted copy attached to the minutes of the meeting of the directors of the corporation, authorizing the contract; that at the time the authorization was made the railroad company was unable to meet the purchase price, but that he did not know whether or not the Weist Logging Company was about to take back the property.

Over objection of counsel for complainants witness stated that he did not recall ever seeing or hearing anything about a written notice or demand on

(Testimony of H. E. Collins.)

the part of the Weist Logging Company to take back the property. That he had the records of the Washington Northern Railroad Company and would endeavor to find such notice. That the property of the Weist Logging Company was in his possession or custody, but he didn't know whether or not he had the right to it. That it was assessed to the Oregon-Washington Timber Company.

Witness stated that he did not know whether the \$149,150.42, referred to in the letter written by the Assets Realization [202] Company to J. E. Blazier was paid over to the Mississippi Valley Trust Company; that the only amount he knew anything about was the net amount received by the companies at Portland, forwarded by the Assets Realization Company as the net amount received from that loan. That he thought the books of the company showed that payments were made to the various parties named in the statement attached to the letter dated April 17th, 1912; that he did not know for what purpose they were made or in payment of what indebtedness, as it was all done from the Chicago office. That all he knew was that the \$45,439.68 was the net money received here after everything else had been taken care of at Chicago. That neither of the sums mentioned in Complainants' Exhibit No. 15 had been paid, that the statement simply shows the payments in default on September 1st, 1913. That one payment of \$30,000 had been made. That the bonds of the Oregon-Washington Timber Company, 1 to 30 both inclusive were cancelled on account of that pay-

(Testimony of H. E. Collins.)

ment; that as he understood it, \$30,000 of first mortgage bonds of the Washington Northern Railroad Company were up as collateral and that \$30,000 in bonds were cancelled on account of that payment; that when the \$30,000 in bonds of the timber company were paid that released \$30,000 in bonds that the railroad company held as collateral for the bonds in like amount of the timber company.

Over objection of counsel for complainants witness testified that the stock of the Washington Northern Railroad Company was give as a bonus with the purchase by eastern parties of the \$600,000 of bonds in June, 1910; that he did not know who were the holders of these bonds. That the entire capital stock of the railroad company went as a bonus to the purchasers of the bonds. That the stock was held until about January 30th, 1911.

Over objection of counsel for complainants, witness testified that at the time of the negotiations for the bonds secured by the Crawford mortgage there were outstanding on the properties of the Blazier Timber Company, the Oregon-Washington Timber Company and the Washington Northern Railroad Company bonds in the sum of [203] \$150,000, or more, of so called "Series B" notes, secured by mortgage; that he did not know whether these "Series B" notes were paid out of the proceeds of the sale of the Crawford bonds, that the matter was attended to in the east. That in the books of the Oregon-Washington Timber Company there was an account with the Mississippi Valley Trust Company, but not

(Testimony of H. E. Collins.)

in the books of the Washington Northern Railroad Company. That he had no account in the books of the Oregon-Washington Timber Company with the members of the syndicate, Mr. Hays and other underwriters of the bonds and that their names did not appear in the books of that company as being entitled to any amount, nothing as witness recalled it but a few incidental payments on account of expenses for a trip from the east out here.

The witness further testified that Little & Hays had originally been a corporation, but were a partnership in the month of June, 1910, consisting of William P. Little and Frank P. Hays; that Mr. Little is now dead; that subsequent to June, 1910, the partnership was dissolved and the business was transacted as a corporation; that witness was not advised as to how the stock was held; he did know that neither Mr. Little nor Mr. Hays was a stockholder in the Mississippi Valley Trust Company in June, 1910, or at any other time; that John A. Prescott became interested in the bonds secured by mortgages executed on the 4th of June, 1910, several months after June, 1910.

Witness excused. [204]

[**Testimony of Frederick Vierling, for
Complainants.**]

FREDERICK VIERLING, being called as a witness for the complainants, being first duly sworn, testified as follows:

Direct Examination by EDWARD C. WRIGHT,
Esq.

In answer to interrogatories propounded by Mr. Wright the witness testified: That he resided at St. Louis, Missouri; was vice-president and trust officer of the Mississippi Valley Trust Company, which was incorporated October 3d, 1890, under the laws of the State of Missouri. That the company had some business with the Washington Northern Railroad Company and the Oregon-Washington Timber Company having become trustee under certain mortgage deeds of trust executed by those companies; that at one time the Trust Company had possession of all the bonds of the railroad company and the timber company, which were subsequently authenticated and then delivered under the respective mortgages; that the \$1,000,000 of bonds of the Washington Northern Railroad Company were pledged as collateral under the mortgage of the Oregon-Washington Timber Company, and remained in the custody of the Trust Company; that the Trust Company originally received \$1,000,000 of the bonds in pledge and had since delivered \$30,000, leaving in the hands of the Trust Company at the present time \$970,000 par value; that both the companies were in default; that the Trust Company referred the matter to Messrs. Snow &

(Testimony of Frederick Vierling.)

McCamant, attorneys [205] in State of Oregon, with authority to serve notice as to default and bring legal proceedings.

Cross-examination by H. P. WEBER, Esq.

Upon cross-examination in answer to interrogatories propounded by Mr. Weber, the witness testified:

That he was elected trust officer of the Mississippi Valley Trust Company in 1897, and had been such trust officer continuously since that date. That the \$1,000,000 par value of the bonds of the Washington Northern Railroad Company were deposited with the Trust Company as security for the bonds of the Oregon-Washington Timber Company; that there were two issues of the timber company bonds, a first mortgage bond issue of \$600,000 and a second mortgage bond issue of \$400,000; that the \$1,000,000 mortgage bonds of the Washington Northern Railroad Company were all first mortgage bonds and \$600,000 par value of the railroad company bonds were deposited as collateral security for the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company and \$400,000 of the railroad company bonds deposited as security for the \$400,000 second mortgage bonds of the timber company, all of the above bonds being dated June 4th, 1910, and all issued about that time according to recollection of witness; that the entire issue of the bonds of the Washington Northern Railroad Company was deposited with the Mississippi Valley Trust Company as trustee as collateral security for the first and second mortgage bonds of

the Oregon-Washington Timber Company, \$600,000 in the one case and \$400,000 in the other.

[Stipulation of Fact as to Use of Bonds.]

It was stipulated and agreed by the respective counsel for complainants and defendants that the following are the facts [206] with respect to the use and intention concerning the use of the bonds of the Washington Northern Railroad Company:

That these bonds were issued solely as collateral for the bonds of the Oregon-Washington Timber Company, \$600,000 in amount, being bonds 1 to 600, inclusive, as collateral security for the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company; \$400,000 in amount, being bonds 601 to 1000, inclusive, face value, as collateral security for the \$400,000 second mortgage bonds of the Oregon-Washington Timber Company. That at the time of the certification and issuance of the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company there was executed and issued by the Washington Northern Railroad Company and certified to by the Mississippi Valley Trust Company, as trustee, a single temporary first mortgage bond in the amount face value of \$1,000,000; that on or about January 30th, 1911, two series of notes, "Series A" in the aggregate amount of \$100,000 and "Series B" in the aggregate amount of \$150,000; that "Series A" notes were executed by the Oregon-Washington Timber Company, the Washington Northern Railroad Company, the Blazier Timber Company and by J. E. Blazier, E. J. Blazier and Eugene Blazier. That "Series B" notes were executed by the three

(Testimony of Frederick Vierling.)

above-named companies and J. E. Blazier; that these two series of notes were secured by a mortgage deed of trust executed by the three above-named companies and J. E. Blazier to the Mississippi Valley Trust Company, trustee, covering all of the property of the Blazier Timber Company, and the \$400,000 second mortgage bonds of the Oregon-Washington Timber Company, which in turn were secured by the \$400,000 first mortgage bonds of the Washington Northern Railroad Company. That at the time of the issuance of these notes no change was made in the \$1,000,000 temporary bond of the Washington Northern Railroad Company. That in the latter part of April or early part of May, 1912, these two series of notes were paid and the mortgage deed of trust securing [207] the same, together with a confirmatory mortgage dated January 26th, 1912, executed by the Blazier Timber Company to the Mississippi Valley Trust Company as trustee was released and discharged of record, and at about the same time the Washington Northern Railroad Company, the Oregon-Washington Timber Company and the Blazier Timber Company executed and issued their joint and several negotiable coupon notes, aggregating the principal sum of \$425,000, and as security for the payment of these notes executed a mortgage deed of trust to William W. Crawford, trustee; and about the same time and for the purpose of the last-named note issue, the Washington Northern Railroad Company executed 1000 of its bonds, numbered 1 to 1000 inclusive, aggregating the prin-

(Testimony of Frederick Vierling.)

cipal sum of \$1,000,000, which were deposited with the Mississippi Valley Trust Company as trustee in lieu of the \$1,000,000 temporary bond, previously executed by the railroad company as above stated. These 1000 bonds of the railroad company were certified by the Mississippi Valley Trust Company as trustee, and used as follows: 600 of the bonds were bonds numbered one to 600, both inclusive and were deposited with and held by the Mississippi Valley Trust Company as collateral security for the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company; bonds numbered 601 to 1000, inclusive, were deposited with and held by the Mississippi Valley Trust Company as trustee, as security for the \$400,000 second mortgage bonds of the Oregon-Washington Timber Company, which were conveyed, transferred, pledged and assigned to William W. Crawford, under the mortgage deed of trust to him to secure the \$425,000 note issue hereinbefore mentioned.

The witness then stated that as trustee under the mortgage it was the duty of the Mississippi Valley Trust Company to authenticate and deliver the \$600,000 first mortgage bonds on the order of the Oregon-Washington Timber Company; that said bonds were delivered under the terms of the purchase contract dated June 4th, 1910, between the Oregon-Washington Timber Company and the [208] Little & Hays Investment Company; that the records of the trust company showed that the sum of \$546,000, representing the proceeds of the sale of the \$600,000

(Testimony of Frederick Vierling.)

first mortgage bonds of the Oregon-Washington Timber Company, was deposited with the financial department of the Mississippi Valley Trust Company to the credit of the Washington Northern Railroad, and that this money was checked out as directed by the bond officer of the Mississippi Valley Trust Company in a communication by him, dated July 6th, 1910, addressed to the trust department; that defendant's Exhibit "A-1" is a true copy of said communication.

Counsel for complainants moved to strike that portion of the answer relating to the disposition of the proceeds of the sale of the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company, as well as Defendant's Exhibit "A-1."

Motion denied.

The following agreement was entered into by and between the respective counsel:

Agreement as to Certain Bonds.

It is agreed and understood that these bonds were delivered to J. E. Blazier, president of the Oregon-Washington Timber Company, in person, as per terms of proposal of June 4th, 1910, addressed to Messrs. Little & Hays, of St. Louis, Missouri, a true copy of this proposal being hereto attached and marked Defendant's Exhibit "B-1."

The witness then stated that he did not know and his records would not tell to whom these bonds were delivered by Mr. J. E. Blazier after their certification and delivery by the trust company to him; that Defendant's Exhibit "B-1" was the only agreement

(Testimony of Frederick Vierling.)

the trust company had concerning this matter. [209]

Referring to the syndicate mentioned in the two mortgages of the Oregon-Washington Timber Company and the mortgage of the Washington Northern Railroad Company, as the purchaser of the \$600,000 first mortgage bonds of the Oregon-Washington Timber Company the witness testified that Defendant's Exhibit "C-1" attached herewith is a true and correct list of the members of the syndicate and the amounts subscribed by each member.

Counsel for complainants objected to this and moved to strike the exhibit from the files on the ground that it was irrelevant and immaterial, and not responsive to any of the issues made from the amended pleadings in the cause. Motion denied.

Witness further testified that the records of the trust department of the Mississippi Valley Trust Company did not show that \$50,000 of the proceeds of the sale of the first mortgage bonds of the Oregon-Washington Timber Company was loaned to said company on its notes and that the records of the trust department of the trust company did not show that at the time the bonds of the Oregon-Washington Timber Company were deposited with the Trust Company there was also deposited certificates of stock for 9923 shares out of a total of 10,000 shares of the capital stock of the Washington Northern Railroad Company; that the records of the Trust Company did not show anything as to the disposition of the proceeds of the "Series A" notes and as to the payment of these notes, nor of the "Series B" notes.

Upon request of counsel for defendant and cross-complainant the witness agreed to attach to his deposition a true copy of the mortgage deed of trust dated January 30, 1911, and of the confirmatory mortgage of January 26, 1912, given to secure "Series A" and "Series B" notes, and the following stipulation was entered into:

[Stipulation as to Defendants' Exhibits "D-1" and "E-1."]

"It is hereby stipulated and agreed that attached hereto as Defendant's Exhibits 'D-1' and 'E-1' are a true copy respectively of the mortgage deed of trust, dated January 30, 1911, and of the confirmatory mortgage of [210] January 26, 1912, given to secure 'Series A' and 'Series B' notes hereinabove mentioned, and that copies may be used in lieu of the originals."

Mr. Wright, of counsel for complainants, objected to the relevancy of instruments "D-1" and "E-1" as not being responsive to any of the issues made by the amended pleadings in this case.

Witness further testified as follows: That the Mississippi Valley Trust Company was the depository, under a certain protective agreement dated June 12th, 1913, for the holders of the first mortgage bonds of the Oregon-Washington Timber Company; that some of the bonds had been deposited with the trust company under that agreement, and agreed to furnish a list of the names, addresses and amounts so far as possible, of the holders of the bonds under the agreement.

[Stipulation as to List of Bondholders.]

Mr. WEBER.—It is stipulated and agreed that a correct list of said bondholders, with their addresses and amount of bonds is set forth in Defendant's Exhibit "F-1" hereto attached and made a part hereof.

Counsel for complainants moved to strike said stipulation from the record and asked the Court to disregard the same as irrelevant and not responsive to any of the issues made by the amended pleadings in this case. Motion denied.

Witness further stated that the Mississippi Valley Trust Company had not qualified under the laws of the State of Washington to do business in said state and to hold title to property therein. That during the negotiations in Oregon and Washington looking to the issuance of the bonds of the timber company and the railroad company Mr. James H. Grover, then bond officer of the trust company, represented that company, and superintended and directed all of the proceedings. That the Oregon-Washington Timber Company made some payments into the sinking fund, as required by the terms of its mortgage to the Mississippi Valley Trust Company and made some of the quarterly statements called for, but not regularly; that he could not say from recollection how many quarterly statements were made. That there had been some correspondence about accounts between the Mississippi [211] Valley Trust Company and the Oregon-Washington Timber Company, as to the method of keeping maintenance and construction accounts; that witness did not consider Mr. H. E. Col-

(Testimony of Frederick Vierling.)

lins the representative of the trust company in Oregon; that he went out to Oregon along about June, 1910, soon after the bonds were negotiated with Little & Hays as the representative of the syndicate, and had been there ever since in that capacity.

Witness further stated that he did not think any officer or employee of the Mississippi Valley Trust Company was interested in the Columbia River & Bald Mountain Railroad Company; that he thought that Mr. Stockton had lately become interested in the Washougal Gold & Copper Mining Company; that Mr. Stockton was a director of the Mississippi Valley Trust Company.

Over the objection of counsel for complainants, the witness stated, in response to a question as to whether any arrangement, agreement or effort had been made to procure a release by the *Mississippi Valley Company* of the first mortgage of the Oregon-Washington Timber Company over the land of that company for the benefit of the Columbia River & Bald Mountain Railroad Company, or any agreement, arrangement or effort to procure a connection between the Washington Northern Railroad Company and the Columbia River & Bald Mountain Railroad Company by which the Washington Northern Railroad Company was to be connected with and used in conjunction with the Columbia River & Bald Mountain Railroad, that he remembered only that the Trust Company, as trustee, would of course make such releases as the parties interested would desire,—that he did not know that it was for the pur-

(Testimony of Frederick Vierling.)

pose indicated, or that such attempt was made; that only a verbal request for such release had been made; that he did not know of any attempt of any kind to use the property of the Washington Northern Railroad Company in connection with or as a part of any other railroad in Skamania County, except as above referred to. [212]

Witness further testified that he had in his files a communication dated April 10th, 1912, addressed to the Mississippi Valley Trust Company, St. Louis, Missouri, and signed by J. E. Blazier as president of the Washington Northern Railroad Company; as president of the Oregon-Washington Timber Company, as president of the Blazier Timber Company, and for individuals, and agreed to produce same.

The following stipulation was entered into:

[Stipulation as to Defendants' Exhibit "G-1."]

"It is stipulated and agreed that a true copy of said communication is hereto attached and marked Defendant's Exhibit 'G-1' and that this copy may be introduced in evidence and used in lieu of the original; subject to objection as to relevancy."

Witness excused.

[212a]

[**Testimony of Samuel B. Blair, for Complainants.**]

SAMUEL B. BLAIR, being called as a witness for the complainants, being first duly sworn, testified as follows:

Direct Examination by EDWARD C. WRIGHT,
Esq.

In answer to interrogatories propounded by Mr. Wright the witness testified as follows: That he resided at St. Louis, Missouri; was connected with the trust department of the Mississippi Valley Trust Company and had been for eight years; that he was with the company in April, 1913; that the two series of notes made by the Oregon-Washington Timber Company, the Washington Northern Railroad Company, the Blazier Timber Company and three individual Blaziers, known as "Series A" and "Series B" notes were cancelled, sent to Chicago and cremated; that he checked up the notes at the time they were sent to Chicago; that they were sent to Chicago on April 5th, 1913.

Cross-examination by HARRY P. WEBER, Esq.

In answer to interrogatories propounded to him by Mr. Weber, the witness testified: That he knew nothing about the payment of the series of notes referred to in his direct testimony; that his records did not show anything about their payment,—that that part of the transaction went through the financial department of the Trust Company, with which witness was not connected; that he had no access to the records of that department; [213] that the records of the financial department were in charge of

(Testimony of Samuel B. Blair.)

the secretary of the company, Mr. J. E. Brock, a member of the syndicate that purchased the first mortgage bonds of the Oregon-Washington Timber Company.

Witness excused. [214]

[Stipulation as to Corporate Records.]

IT IS STIPULATED That the corporate records of the Washington Northern Railroad Company and the Oregon-Washington Timber Company show due authority for the execution of the mortgage by the Washington Northern Railroad Company and the Oregon-Washington Timber Company to the Mississippi Valley Trust Company under date of June 4th, 1910; and that the corporate records of the Oregon-Washington Timber Company, the Washington Northern Railroad Company and the Blazier Timber Company show due authority for the execution by said companies of the mortgage of March 1st, 1912, to William W. Crawford, trustee.

(Filed Nov. 2, 1915.) [215]

Stipulation (as to the Evidence).

WHEREAS, William W. Crawford, defendant and cross-complainant, has appealed from the decree in the above-entitled cause; and,

WHEREAS, the parties are desirous of minimizing the expense of the appeal by eliminating from the record so much thereof as does not bear upon the questions relied upon on the appeal; and,

WHEREAS, a stipulation has been entered into

by complainants indicating the exhibits which are to be taken up on appeal;

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and between complainants and William W. Crawford, defendant and cross-complainant, as follows:

I.

That there was evidence offered and received in the District Court sufficient to support the allegations of the bill to the effect that complainants are duly incorporated and qualified by their corporate powers to accept and administer the trusts alleged in the bill.

II.

That upon proceedings proper to be had therefor complainant Union Trust Company has been made a cotrustee with Mississippi Valley Trust Company of the mortgage given by the Oregon-Washington Timber Company and that such proceedings were had prior to the commencement of this suit.

III.

That at the time when this suit was brought the mortgagor corporations were largely in default in the payment of taxes duly and regularly assessed upon their properties in Skamania [216] County, Washington, and also in the payment of their personal property tax. That the default aforesaid covered taxes for the years 1912 and 1913.

IV.

That there was evidence admitted in the District Court to the effect that demands had been made upon the mortgagor corporations in manner and form required by the mortgages and as alleged in the

bill and that in and by the said demands complainants had duly and regularly signified their option to declare the entire debt due and owing from the mortgagor corporations.

HUFFER & HAYDEN,
SNOW & McCAMANT,
Attorneys for Complainants.

KERR & McCORD,
Attorneys for William W. Crawford, Defendant and
Cross-complainant.

(Filed Aug. 27, 1915.) [217]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing pages numbered from 1 to 217 inclusive, constitute a full, true and correct transcript of the record and proceedings in the case of MISSISSIPPI VALLEY TRUST COMPANY etc. et al. vs. WASHINGTON NORTHERN RAILROAD COMPANY, etc. et al. WILLIAM W. CRAWFORD, trustee, cross-complainant, No. 9—Equity, lately pending in this court, as required by the praecipe of counsel filed in said cause, as the originals thereof appear on file in this court, at the city of Tacoma, in the district aforesaid.

I further certify and return that I hereto attach and herewith transmit the original citation, and

original orders extending time to file transcript on appeal, and I also transmit under separate cover and certificate the original exhibits as required by the stipulation of counsel herein filed.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the appellant herein, for making the record, certificate and return to the United States Court of Appeals for the Ninth Circuit, in the above entitled cause, to wit:

Clerk fees (Sec. 828 R. S. U. S.) for making record, certificate and return, 626 folios @ 15¢ ea.....	93.90
Certificate of clerk to transcript, 3 fo. @ 15¢.	.45
Certificate as to original exhibits appellant, 2 fo.....	.50

[218]

Certificate and seal as to original exhibits of appellees, 2 fo.....	.50
Seal to transcript20

ATTEST my hand and the seal of the United States District Court, at Tacoma, in the Western District of Washington, Southern Division, this 28th day of December, A. D. 1915.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy Clerk. [219]

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

No. 9-E—IN EQUITY.

MISSISSIPPI VALLEY TRUST COMPANY, a
Corporation and UNION TRUST COM-
PANY, a Corporation,

Complainants.

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation; OREGON-WASH-
INGTON TIMBER COMPANY, a Corpora-
tion; BLAZIER TIMBER COMPANY, a Cor-
poration; and WILLIAM W. CRAWFORD,
Trustee,

Defendants.

WILLIAM W. CRAWFORD, Trustee,
Cross-complainant,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation; OREGON-WASH-
INGTON TIMBER COMPANY, a Corpora-
tion; BLAZIER TIMBER COMPANY, a
Corporation, MISSISSIPPI VALLEY
TRUST COMPANY, a Corporation, Trustee;
UNION TRUST COMPANY, a Corporation,
Trustee; FRANK P. HAYS and WILLIAM
C. LITTLE, Copartners Doing Business as
LITTLE & HAYS;—HAYS; BRECKEN-
RIDGE JONES; ELI KLOTZ; JAMES
GROVER; JAMES E. BROECK; J. E.

BLAZIER; E. J. BLAZIER; and JOHN A. PRESCOTT and D. L. ROBINSON, Copartners Doing Business as JOHN A. PRESCOTT & COMPANY,

Defendants.

Citation on Appeal.

United States of America,—ss.

To Washington Northern Railroad Company, a Corporation; Oregon-Washington Timber Company, a Corporation; Blazier Timber Company, a Corporation; Mississippi Valley Trust Company, a Corporation, Trustee; Union Trust Company, a Corporation, Trustee; [220] Frank P. Hays and William C. Little, Copartners Doing Business as Little & Hays; — Hays; Breckenridge Jones; Eli Klotz; James Grover; James E. Broeck; J. E. Blazier; E. J. Blazier; and John A. Prescott and D. L. Robinson, Copartners Doing Business as John A. Prescott & Company; Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, thirty days from date hereof, on the 13th day of September, A. D. 1915, pursuant to an order allowing an appeal, filed and entered in the office of the clerk of the District Court of the United States for the Western District of Washington, Southern Division, from a final decree signed, filed and entered on the 4th day of March, A. D. 1915, in that certain suit, being in equity, wherein the Mississippi Valley Trust Com-

pany, a corporation, and Union Trust Company a corporation, trustees, are complainants, and Washington Northern Railroad Company, a corporation, Oregon-Washington Timber Company, a corporation, Blazier Timber Company, a corporation, and William W. Crawford, trustee, are defendants; and wherein William W. Crawford, trustee, is cross-complainant and Washington Northern Railroad Company, a corporation, Oregon-Washington Timber Company, a corporation, Blazier Timber Company, a corporation, Mississippi Valley Trustee Company, a corporation, trustee, Union Trust Company, a corporation, trustee, Frank P. Hays and William C. Little, copartners doing business as Little & Hays, — Hays, Breckenridge Jones, Eli Klotz, James Grover, James E. Broeck, J. E. Blazier, E. J. Blazier, and John A. Prescott and D. L. Robinson, copartners doing business as John A. Prescott & Company, are defendants, to show cause, if any there be, why the decree rendered against the said William W. Crawford, trustee, as in said order allowing appeal mentioned, should not be corrected, and why [221] justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD C. CUSHMAN, United States District Judge for the Western District of Washington, this 13th day of August, A. D. 1915.

[Seal] EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington.

Service accepted Aug. 13, '15.

WALTER McCAMANT,
HUFFER & HAYDEN,
Attys. for Complainant. [222]

[Endorsed]: No. 9-E. In the District Court of the United States for the Western District of Washington, Southern Division. Mississippi Valley Trust Company, a Corporation et al., Complainants, vs. Washington Northern Railroad Company, a Corporation et al., Defendants. William W. Crawford, Trustee, vs. Washington Northern Railroad Company et al, Defendants. Citation on Appeal. Filed in the U. S. District Court Western Dist. of Washington, Southern Division. Aug. 13, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

No. 9.

MISSISSIPPI VALLEY TRUST COMPANY, a
Corporation, et al., Trustees,

Complainants,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, et al.,

Defendants,

WILLIAM W. CRAWFORD, Trustee,

Cross-complainant,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, et al.,

Defendants.

Order Enlarging Time [to October 15, 1915] for Filing Record.

Good cause being shown it is by the undersigned, the Judge who signed the citation on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit,

ORDERED that the time of the defendant and cross-complainant, William W. Crawford, the appellant in said appeal, for filing the record and docketing the said cause on said appeal to the United States Circuit Court of Appeal for the Ninth Circuit be and the same is hereby extended and enlarged until and including the 15th day of October, A. D. 1915.

Dated at Tacoma, Washington, this 13 day of September, A. D. 1915.

OK.—S. & McC.

JEREMIAH NETERER,

United States District Judge for the Western District of Washington. [223]

[Endorsed]: No. 9. In the District Court of the United States for the Western District of Washington, Southern Division. Mississippi Valley Trust Company et al., Trustees, Complainants, vs. Washington Northern Railroad Company et al., Defendants. William W. Crawford, Trustee, Cross-complainant, vs. Washington Northern Railroad Co. et al., Defendants. Stipulation Enlarging Time for Filing Record. Filed in the United States District Court, Western District of Washington. Sep. 13, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

IN EQUITY—No. 9.

MISSISSIPPI VALLEY TRUST COMPANY, a
Corporation, et al., Trustees,
Complainants,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation et al.,
Defendants,

WILLIAM W. CRAWFORD, Trustee,
Cross-complainant,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation et al.,
Defendants.

**Order Enlarging Time [to November 15, 1915] for
Filing Record.**

Good cause being shown, it is by the undersigned, the Judge who signed the citation on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit,

ORDERED: That the time of said cross-complainant, the appellant in said appeal, for filing the record and docketing the cause on said appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended and enlarged until and including the 15th day of November, A. D. 1915.

Dated at Tacoma, Washington, this 2d day of November, 1915.

Nunc Pro Tunc as of Oct. 15, 1915.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington.

It is stipulated the above order shall be entered and signed by Judge E. E. Cushman as of date of Oct. 15, 1915, and shall be entered and recorded on Oct. 15, 1915, [224] and if necessary a *nunc pro tunc* order so entering said order may also be entered.

KERR & McCORD,
Attys. for W. W. Crawford, Trustee.

HUFFER & HAYDEN,
Attorneys for Complainants.

[Endorsed]: No. 9. In the District Court of the United States for the Western District of Washington, Southern Division. Mississippi Valley Trust Company, a Corporation, et al., Complainants, vs. Washington Northern Railroad Company, a Corporation, et al., Defendants. William W. Crawford, Trustee, Cross-complainant, vs. Washington Northern Railroad Company, a Corporation, et al., Defendants. Order Enlarging Time for Filing Record. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 2, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

IN EQUITY—No. 9.

MISSISSIPPI VALLEY TRUST COMPANY, a
Corporation, et al., Trustees,
Complainants,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, et al.,
Defendants.

WILLIAM W. CRAWFORD, Trustee,
Cross-complainant,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, et al.,
Defendants.

**Order Enlarging Time [to February 15, 1916] for
Filing Record.**

Good cause being shown, it is by the undersigned, the Judge who signed the citation on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit,

ORDERED, That the time of said cross-complainant, the appellant in said appeal, for filing the record and docketing the cause on said appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended and enlarged until and including the 15th day of Feb., A. D. 1916.

Dated this 13th day of Nov., A. D. 1915.

EDWARD E. CUSHMAN,
United States District Judge for the Western Dis-
trict of Washington. [225]

[Endorsed]: No. 9. In the District Court of the United States for the Western District of Washington, Southern Division. Mississippi Valley Trust Company, a Corporation, et al., Trustees, Complainants, vs. Washington Northern Railroad Company, a Corporation, et al., Defendants. William W. Crawford, Trustee, Cross-complainant, vs. Washington Northern R. R. Co., a Corp., et al., Defendants. Order Enlarging Time for Filing Record. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 13, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals for the
Ninth Judicial Circuit.*

No. 9-E.

MISSISSIPPI VALLEY TRUST COMPANY, a
Corporation, et al., Trustees,
Complainants,
vs.
WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, et al.,
Defendants.

WILLIAM W. CRAWFORD, Trustee,
Cross-complainant,
vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, et al.,
Defendants.

**Order [Modifying Order of November 13, 1915,
Enlarging Time].**

The motion of complainants to vacate the order heretofore passed extending the time for filing the record and docketing this cause on appeal coming on for hearing, and it appearing that, on the 13th day of November, 1915, this Court entered an order extending the time for cross-complainant, the appellant on said appeal, for filing the record and docketing this cause on said appeal in the United States Circuit Court of Appeals for the Ninth Circuit until and including the 15th day of February, 1916, and it further appearing that said time should be shortened to the 5th day of January, 1916,

IT IS ORDERED that the said order of November 13, 1915, be, and the same is hereby modified so that the said date of the "15th day of February, 1916," shall read "5th day of January, 1916."

AND IT IS FURTHER ORDERED that the Clerk of this court be, and he is hereby ordered and directed to transmit and forward the said record and transcript on appeal to the United States Circuit Court of Appeals not later than December 31st, 1915.

Dated this 20th day of December, 1915.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Original. No. 9-E. In the United States District Court, Western District of Washington, Southern Division. Mississippi Valley Trust Co. et al., Trustees, Complainants, vs. Washington Northern Railroad Co., Defendants, etc. Order. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 20, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 2723. United States Circuit Court of Appeals for the Ninth Circuit. William W. Crawford, Trustee, Appellant, vs. Washington Northern Railroad Company, a Corporation, Oregon-Washington Timber Company, a Corporation, Blazier Timber Company, a Corporation, Mississippi Valley Trust Company, a Corporation, Trustee, Union Trust Company, a Corporation, Trustee, Frank P. Hays and William C. Little, Copartners Doing Business as Little & Hays, — Hays, Breckenridge Jones, Eli Klotz, James Grover, James E. Broeck, J. E. Blazier, E. J. Blazier and John A. Prescott and D. L. Robinson, Copartners Doing Business as John A. Prescott & Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed December 30, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Certificate of Clerk U. S. District Court to Original
Exhibits.]

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the enclosed papers are the original exhibits introduced in the case of Mississippi Valley Trust Company vs. Washington Northern Railroad Company et al., No. 9—Equity, by the complainants, and stipulated by counsel to be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit:

Exhibit 8—Copy of Mortgage, Washington Northern Rd. Co. to Mississippi Valley Trust Co., dated June 4, 1910;

Exhibit 9—Copy of first mortgage, Ore. Wash. Timber Co. to Mississippi Valley Trust Co., dated June 4, 1910;

Exhibit 10—Copy of second mortgage, Oregon-Wash. Timber Co. to Mississippi Valley Trust Co., dated June 4, 1910;

Exhibit 11—Copy of Mortgage, Wash. Northern Rd. Co. Ore. Wash. Timber Co. and Blazier Timber Co. to Wm. W. Crawford, Trustee, dated March 1, 1912;

Exhibit 13—Proposal of Ore. Wash. Timber Co. to Wash. Northern Rd. Co. dated June 4, 1910, on subject of purchase of bonds of Wash. Northern Rd. Co. by Ore. Wash. Timber Co., etc.

Exhibit 15—Statement of payments of principal and interest called for by complainants' mortgages prior to bringing of the suit.

Exhibit 16—Certain accounts shown by books of Wash. Northern Rd. Co. and Ore. Wash. Timber Co.

Exhibit 17—Entry on books of Washington Northern Rd. Co. of credit to first mortgage 6% bond account—\$1,000,000 bonds.

Exhibits 18 and 19—Pages of Account-book of Washington Northern Rd. Co.

Exhibit 29—File of Letters from Zane & Busby & Weber to J. E. Blazier.

Exhibit 30—Letter and account.

Exhibit 31—Contract between the Wash. Northern Rd. Co. and Weist. Logg. Co.

Exhibit 32—Statement of payments on Weist Logg. Co. contract.

Exhibit 33—Copy resolution authorizing execution of mortgage of June 4, 1910, by Ore. Wash. Timber Co. to Miss. Valley Tr. Co.

Exhibit 34—Pages 59-60 and 61, Vol. 3 of Ore. Wash. Logg. Co. afterwards Ore. Wash. Timber Co.

Exhibit 36—Certain pages Record-book #4 Ore. Wash. Logg. Co. afterwards Ore. Wash. Timber Co.

Exhibit 37—Extracts from minute-book of Wash. Northern Rd. Co.

Attest my official signature and the seal of this

Court, at Tacoma, this 28th day of December, A. D. 1915.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy Clerk.

[Endorsed]: No. 2723. United States Circuit Court of Appeals for the Ninth Circuit. William W. Crawford, Trustee, vs. Washington Northern R. R. Co. et al. Certificate of Clerk U. S. District Court Re Exhibits. Filed Dec. 30, 1915. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

MISSISSIPPI VALLEY TRUST COMPANY et
al.,

Complainants,

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY et al.,

Defendants.

**Stipulation [That Original Exhibits Need Not be
Printed, etc.].**

It is stipulated that the original exhibits transmitted with the record in the above case need not be printed; also that both opinions passed by Honorable Edward E. Cushman shall be printed, including the opinion transmitted by solicitors for appellee. It is also stipulated that the cause may be set for

hearing on February 25th, 1916, or February 26th, 1916.

KERR & McCORD,
Solicitors for Appellant, Wm. W. Crawford, Trustee.
SNOW & McCAMANT,
Solicitors for Appellees.

[Endorsed]: Original No. 2723. In the United States Circuit Court of Appeals for the Ninth Circuit. Mississippi Valley Trust Company et al., Complainants, vs. Washington Northern Railroad Company et al., Defendants. Stipulation. Filed Dec. 30, 1915. F. D. Monckton, Clerk.

[Opinion, filed March 27, 1914.]

*In the District Court of the United States, Western
District of Washington, Southern Division.*

No. 9.

MISSISSIPPI VALLEY TRUST COMPANY, a
Corporation and UNION TRUST COM-
PANY, a Corporation, Trustees,
Complainants.

vs.

WASHINGTON NORTHERN RAILROAD COM-
PANY, a Corporation, OREGON-WASH-
INGTON TIMBER COMPANY, a Corpora-
tion, BLAZIER TIMBER COMPANY, a
Corporation, and WILLIAM W. CRAW-
FORD, Trustee,
Defendants.

Filed March 27, 1914.

[212 Fed. 776.]

SNOW & McCAMANT, for Complainants.

HUFFER & HAYDEN, KERR & McCORD,
for Defendant William W. Crawford.

Complainants rely on the following authorities:

Bronson v. LaCrosse R. R. Co., 2 Wall., 283,
310;

Jerome v. McCarter, 94 U. S., 734, 736;

Central Bank v. Hazzard, 30 Fed., 484, 486;

Pratt v. Nixon, 91 Ala., 192; 8 Southern, 751;

Horton v. Davis, 26 N. Y., 495;

Freeman v. Auld, 44 N. Y., 50;

Johnson v. Thompson, 129 Mass., 398, 400; 34
CYC., 758;

Gillespie v. Torrance, 25 N. Y., 306, 311;

Force v. Age-Herald Co., 136 Ala., 271; 33 S.,
866, 868;

Allis v. Jones, 45 Fed., 148, 150;

Old Dominion Co. v. Lewisohn, 210 U. S., 206;

Williams Co. v. Kinsey Co., 205 Fed., 375, 376;
34 CYC., 719, 720;

Sec. 3443 Rem. & Bal. Code,

2 Randolph on Commercial Paper, Section 986;

New York Security Co. v. Equitable Co. 77 Fed.,
64;

Dooley v. Virginia Co., 7 Fed. Cases, p. 913;
Case No. 3999;

In re Burton, 29 Fed., 637, 638, 640;

White v. Fisher, 62 Ill., 258, 259, 261;

Gordon v. Wansey, 21 Cal., 77, 79;

Schinkel v. Hanewinkel, 19 La. Ann., 260;

- Thompson's Adm'r v. George, 5 S. W., 760;
 Eastman v. Plumer, 32 N. H., 238;
 Wallace v. Bank, 1 Ala., 565, 570;
 Winans v. Wilkie, 41 Mich., 264; 1 N. W., 1049;
 Brosseau v. Lowry, 70 N. E., 901, 904;
 Lawson v. McKenzie, 44 Ia., 663;
 Swem v. Newell, 19 Colo., 397; 35 Pac., 734, 735;
 Kneeland v. Miles, 24 S. W., 1113; 1115 (Tex.
 App.)
 First Nat'l Bank v. Maxfield, 83 Maine, 576; 22
 Atl., 479, 480;
 First Nat'l Bank v. Harris, 7 Wash., 139; 142
 to 144, 34 Pac., 466;
 4 Am. & Eng. Enc. of Law, 2d Ed., p. 310;
 2 Randolph on Commercial Paper, Sec. 289;
 Storey on Promissory Notes, Sec. 120;
 Muller v. Pondier, 53 N. Y., 325;
 O. Mulcahy v. Holley, 28 Minn., 31;
 Central Trust Co. v. First Nat'l Bank, 25 Law
 Ed., U. S., 876-8;
 Thompson-Houston Elec. Co. v. Capitol Electric
 Co., 56 Fed., 849;
 Spinning vs. Sullivan, 11 N. W., 758;
 Galusha v. Sherman, 47 L. R. A., 417;
 Osgood's Adms. v. Artt., 17 Fed., 575.

The defendant Crawford relies upon the following authorities:

- Sec. 848 Vol. 3 Cook on Corporations, Drury vs.
 Cross, 7 Wall., 299;

CUSHMAN, District Judge.

Complainants interpose a motion to strike out certain paragraphs of the amended answer of the de-

fendant, William W. Crawford. For a proper understanding of the matter, a brief outline of the complaint and answer is necessary.

Complainants ask the foreclosure of two mortgages, executed January 4, 1910—one upon the property of the Washington Northern Railroad Company, hereinafter referred to as the “railroad company,” and the other upon the property of the Oregon-Washington Timber Company—both given to the Mississippi Valley Trust Company, the first of which is now held by it and the second by it and its cotrustee, Union Trust Company, one of the plaintiffs herein.

The railroad company’s mortgage was given to secure bonds to the amount of \$1,000,000.00, all of which have been issued. The Oregon-Washington Timber Company’s mortgage was given to secure \$600,000, in bonds. All of the railroad company’s bonds were purchased by the Oregon-Washington Timber Company, and \$600,000 worth of these bonds were surrendered to the Mississippi Valley Trust Company, as part of the security for the payment of the \$600,000 of the Oregon-Washington Timber Company’s bonds.

The Oregon-Washington Timber Company’s mortgage provides that, upon the payment of any of its bonds, a like amount, par value, of the railroad company’s bonds, so conveyed to the trust company, should be also cancelled and returned to the railroad company, or delivered to it uncanceled, at the option of the railroad company. The \$600,000, of the Oregon-Washington Timber Company’s bonds were sold.

On the same date (June 4, 1910), the Oregon-Washington Timber Company executed a second mortgage to the same trustee to secure a bond issue of \$400,000, sold by it to the railroad company, and also transferred to the railroad company, to secure the payment of the \$400,000, a like amount of the railroad company's bonds, which latter bonds are held by the trustee. The second mortgage, in like manner, provides for the surrender of the railroad company's bonds, upon payment of those of the Oregon-Washington Timber Company.

The railroad company and the two defendant timber companies, on March 1, 1912, gave a further mortgage to the defendant Crawford, as trustee, by which the railroad company assigned to him the said \$400,000 second mortgage bonds of the Oregon-Washington Timber Company and the \$1,000,000 of the railroad company's bonds—the latter to be delivered upon their release under the prior mortgages.

By an agreement between the railroad company and the Oregon-Washington Timber Company, the proceeds of the second mortgage bonds of the Oregon-Washington Timber Company, secured by the \$400,000 of the railroad company's bonds, were to be used in building additional railroad lines, but were pledged to the trustee, Crawford, who, it is charged, had notice of the terms of this agreement. Thirty thousand dollars, only, of the Oregon-Washington Timber Company's bonds have been paid. Upon which, \$30,000 of the railroad company's bonds were released and delivered to the mortgagee, Crawford, uncanceled.

The complainants ask, upon the decree, a determination whether the \$430,000 railroad company's bonds claimed by Crawford are equal in dignity, or postponed to the \$570,000 held as security by complainants.

The defendant, Crawford, trustee, answers that a proposition made June 4, 1910, by the Oregon-Washington Timber Company, was accepted by the railroad company, the material parts of which proposition were:

“We understand that you are proposing to make certain extensions to your railroad (formerly owned by the Cape Horn Railroad Company), the result of which will be to increase our facilities for marketing the timber from our lands in Skamania County, Washington, and that you have authorized an issue of One Million Dollars (\$1,000,000.) par value first mortgage six per cent gold bonds, dated the 4th day of June, 1910, due on the first day of May, 1928, and secured by a first mortgage on your railroad property.

“We propose to buy from you the entire issue of One Million Dollars (\$1,000,000) par value of said bonds and pay you therefor Four Hundred Thousand Dollars (\$400,000.) par value of our bonds as hereinafter described, and the sum of Five Hundred and Forty Thousand Dollars in money, said money to be used for the following purposes:

* * * * *

“\$125,000 to be used for the payment of the

present floating indebtedness of the Cape Horn Railroad Company.

“\$215,000 to be used for extensions, betterments and equipment to your railroad property.”

* * * * *

As a further consideration for the sale to us of said One Million Dollars (\$1,000,000) of your bonds, and without any new or further consideration, we agree to sell and deliver to you Four Hundred Thousand Dollars (\$400,000) par value six per cent gold bonds issued by us, dated the 4th day of June, 1910, due serially \$30,000 par value every six months, beginning May 1st, 1922, the last \$40,000 thereof maturing May 1st, 1928, and secured by second mortgage on our lands and timber in Skamania County, Washington, and secured also by \$400,000 par value of the \$1,000,000. par value of bonds now proposed to be purchased by us from you; said \$400,000 par value of our bonds so sold to you, however, or the proceeds of the sale thereof, to be used by you only for future extensions, betterments or equipment to your railroad, after the expenditure of the said sum of \$540,000 above mentioned.

“The \$1,000,000 par value of your bonds hereby proposed to be purchased by us are all to be executed and delivered by you to the trustee in the mortgage securing the same, and to be by said trustee duly authenticated, and \$600,000 par value thereof to be deposited with the Mississippi Valley Trust Company of St. Louis, Missouri, to be by it held in trust as security un-

der the terms of a certain first mortgage dated June 4, 1910, executed by us to said Mississippi Valley Trust Company to secure an issue of \$600,000 par value of 6% gold bonds issued by us, and the remaining \$400,000 par value of your bonds hereby proposed to be purchased are to be deposited with the said Mississippi Valley Trust Company to be by it held in trust as security under the terms of a certain second mortgage dated June 4th, 1910, executed by us to said Trust Company to secure an issue of Four Hundred Thousand Dollars (\$400,000) par value second mortgage 6% gold bonds issued by us, which latter \$400,000 par value second mortgage bonds are the bonds hereinabove agreed to be sold and delivered to you.

“The said sum of \$540,000 to be deposited as needed for the purposes mentioned above to your credit at said Mississippi Valley Trust Company and to be paid out in checks signed by you and countersigned by said Trust Company for said purposes.”

It is averred that the \$600,000 timber company bonds mentioned were sold to a syndicate, together with \$999,300 par value of the corporate stock of the railroad company for \$540,000; that the members of the syndicate and trust company knew, at the time of the purchase, of the purposes to which—by the agreement—the money raised was to be applied; that a large portion of these bonds are still held by the members of this syndicate; that, instead of the money being expended as agreed, the proceeds of the

sale of the bonds were spent, in part as follows :

“\$175,000 for the payment of timber lands acquired by the Oregon-Washington Timber Company from the Whitney Estate.

“An amount in excess of \$100,000, as this defendant believes and charges to be the fact, in building camps and in buying additional logging equipment for the Oregon-Washington Timber Company.”

That the railroad company was without power to issue bonds for such purpose; but this was done by the trust company at the direction of the present holders of the \$570,000 bonds upon which suit is brought, \$300,000 of which bonds are still held by the members of the syndicate; that complainants are estopped from sharing in the proceeds of the sale of the railroad company's property, to the extent of such unauthorized expenditure.

This defendant further avers that, in February, 1911, the Blazier Timber Company was incorporated; that, subsequently, the two timber companies and the railroad company authorized the execution, by the three companies, of two series of notes:

Series “A” to consist of \$100,000 joint collateral trust notes,

Series “B,” of \$150,000, joint collateral notes.

These notes were secured by an indenture of the three companies to the Mississippi Valley Trust Company conveying all of the property of the Blazier Timber Company and the railroad company assigned to the trustee the \$400,000 second mortgage bonds of the Oregon-Washington Timber Company

and \$400,000 of its own bonds, deposited as collateral security for those of the timber company.

The proceeds of the Series "A" notes were used as authorized; but it is alleged that the Series "B" notes were delivered to the syndicate for the purchase of the railroad company's stock, sold to the syndicate with the first mortgage bonds of the Oregon-Washington Timber Company; that the stock was not sold to either of the three companies, but to J. E. Blazier, individually; that the amount of these notes has been paid to the members of such syndicate by the railroad company and the Blazier Timber Company, for which purpose the funds of such companies have been unlawfully diverted. These transactions are alleged as an offset herein. To have an accounting of such funds, defendant asks that the members of the syndicate be brought into the suit, or, if beyond the jurisdiction, that they be denied the right to participate in the proceeds of the sale upon foreclosure herein.

The motion to strike is directed to the foregoing allegations of the answer.

The mortgage to the defendant, Crawford, expressly recognizes the priority of the mortgages being foreclosed herein and the \$600,000 of bonds issued thereunder. As a subsequent mortgagee, the defendant, Crawford, is estopped to deny such priority.

"At the time this third mortgage was executed, and thus made subject to the second mortgage bonds, all these bonds had been negotiated

by the company, and were in circulation, in the business community. They were all negotiated in the months of September, October, November and December, 1857. This, the company, of course, well knew at the time of the execution of the third mortgage, and knew, also, of the circumstances attending the negotiation of them. They had received and were in the enjoyment of the avails of them, and with this knowledge, and under these circumstances, the third mortgage, and the bonds issued under it, were made in express terms subject to the payment and satisfaction of the bonds issued under the second. All persons, therefore, taking these third mortgage bonds, or coming in under the mortgage, took them and came in with a full knowledge that the mortgagor had made the security subject to the prior lien and indebtedness. Even if there had been any valid objection to these bonds under the second mortgage, it was competent for the obligor to waive them, and no better proof could be furnished of the waiver, than the acknowledgment of the full indebtedness, by making the subsequent security subject to it. This was a question that belonged to the obligor to determine for himself when giving the third mortgage; but, besides this, what right have those coming in under it to complain? They come in with full notice of the acknowledgement of the indebtedness and previous lien; and, especially, what right have the Milwaukee and Minnesota Company to com-

plain, who purchased the equity of redemption through Barnes, their agent, subject to the previous incumbrances of \$1,000,000. They have the benefit of that incumbrance by an abatement of that amount in the price of the purchase." *Bronson v. La Crosse Railroad Co.*, 2 Wall., 283, at 311.

Jerome vs. McCarter, 94 U. S., 734.

Clearly the matters set up do not amount to payment of the bonds. To constitute payment something of agreement, or consent, actual or constructive, as to the application of credits, either on behalf of the trust company, or the bond holders, or the mortgagor would be necessary. Consent of the mortgagor might take the form of asking the application of payment of the funds theretofore wrongfully diverted or misappropriated, but where one claims through the debtor, such consent in some form is essential.

The diversion of the funds from their authorized purpose is not a failure of consideration. The \$540,000 agreed to be paid for the bonds, was the consideration therefor. It was paid and received by the mortgagor and, if the agreement collateral to the mortgage between the railroad company and the Oregon-Washington Timber Company, as to its expenditure, was violated and more money expended for the benefit of the timber company than agreed, it cannot be said to be a failure of consideration for the bonds or mortgage securing them. When the money was paid for the bonds, the bond holders were not, thereafter, concerned or responsible for its dis-

position. If they were subsequently guilty of misconduct—having acquired the bonds in good faith—and not acting in a fiduciary relation thereto, it would not avoid the bonds, but be the subject matter of an independent cause of action.

Considering the matters set up in the answer as in the nature of a set off or counter claim, and putting to one side the question whether they are of such a nature as to warrant their pleading by the proper party, under Equity Rule 30, yet it is clear that they are causes of complaint which concern the railroad company in the one instance, and the railroad company and the Blazier Timber Company in the second instance, and that Crawford, as a subsequent mortgagee, does not control them—that they are not asserted by the holder of the right of action thereunder, if any.

“Mutual cross-demands do not as a general rule extinguish each other by the mere operation of the law regulating setoffs, without the acts of the parties, and a defendant holding a claim against plaintiff is not compelled to avail himself of it but has the option of pleading the same by way of setoff in an action against him, or of making it the ground of an independent action, and the rule is the same in regard to recoupment, and counterclaim; and plaintiff has no option or power to require him to do so, or to apply the subject of the setoff as a payment on his demand, in the absence of any agreement authorizing such application;” 34 Cyc., 758.

The allegations that the debtor companies are in-

solvent are not sufficient to warrant the court in giving to a particular creditor—where *they* may be many interests affected—the right to speak and make election for the alleged insolvents.

The defendant urges that his defense is not controlled by the foregoing reasons, because of the fact that, while his mortgage, executed by the three defendant companies, expressly recognized the priority of the mortgages herein sought to be foreclosed and the bond issues thereunder, yet, as part of his security, there were assigned to him the railroad company bonds held by complainants, to be delivered to him as they were, from time to time, surrendered, under the terms of the first mortgage; that, therefore, defendant, as a holder of bonds secured by the first mortgage of the railroad company, is not estopped to question the amounts due other bond holders of the same issue.

This position is untenable. Defendant cannot now be considered as the innocent holder of negotiable paper before maturity, for he did not come into possession of the bonds at the time he parted with his money. He has not possession now of the bonds. They are in the possession of complainants to secure another's claim. But \$30,000 of them have been released. Defendant can have no right to them until they are released.

2 American & English Encyc. of Law, Sec. Ed.,
310;

7 Cyc., 926;

Muller v. Pondier, 55 N. Y., 325, 335; 14 Am.
Rep., 259;

To accomplish their surrender may take the entire property securing them, and, so far as the first bond issue is concerned, he gets them, if at all, after they have matured and, in effect, been paid.

It is not necessary to consider whether, under the circumstances of this case, the railroad company's bonds are held as collateral security, or otherwise. The effect upon this defense is the same. The recognition by an unsecured creditor of the right of the debtor, upon payment, to obtain, uncanceled, the written evidence of the debt, would justify the conclusion that such unsecured creditor contemplated the effective reissue of such obligation. But that is not this case.

The railroad company was interested in having its bonds surrendered to it, and not surrendered to the timber company—the party pledging the railroad company's bonds and, ordinarily, entitled, upon the payment of its debt, to a surrender of the collateral securing it. By the surrender of its bonds to the railroad company, the size of its debt was lessened. To say it might, at its option, receive these bonds, uncanceled, would get around—so far as the parties to the agreement are concerned—the reasoning embodied in that line of decisions holding that their surrender would, absolutely, extinguish them for all purposes, as evidences of existing obligations.

In re Burton, 29 Fed., 637.

But, in the absence of a more clearly expressed intention than appears in the first mortgages, it could not fairly be assumed that it was intended that the surrender bonds, if reissued, should assume even

rank with those not surrendered. The prior creditor is entitled to its security to the full from both mortgagors, and this right is undiminished until its debt is fully paid.

N. Y. Security & T. Co. v. Equitable Mortgage Co., 77 Fed., 64.

If the money paying the timber company's bonds was realized from the property of the railroad company, and a railroad company bond was surrendered and reissued, of equal rank with those unsundered, the security for the remaining bonds would be lessened and diluted. Such a proceeding would effect a partial release of the mortgage.

By surrendering, or agreeing to surrender to the obligor uncanceled bonds discharged from the mortgage securing them, no right, under the mortgage is assigned or given. By that transaction, they are severed and separated from the mortgage, originally securing them, and, unless some innocent purchaser—ignorant of their reissue, held them for value, they could not again be held to share under the lien of the mortgage.

Whether such circumstances would affect such reinstatement of such bonds under the mortgage, it is not now necessary to determine; but, if such was the result, it would, primarily, depend upon equitable principles not here present. Under the circumstances of this case, to warrant such an effect, the language should be clear and positive.

Whatever the effect of the reissue of these bonds to Crawford, on debts contracted subsequent to the first mortgage and prior to their delivery, may be,

every reason is against their being held of equal rank with unpaid and unsurrendered bonds of the same issue.

All of the matters moved against will be stricken.

[Endorsed]: No. 2723. United States Circuit Court of Appeals, for the Ninth Circuit. Filed Dec. 30, 1915. F. D. Monckton, Clerk.